G. C. Woodruff
Litchfield
Ct.

Vol 4

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## Conditions

[illegible]

[illegible]

[illegible]

[illegible] laws are [illegible]
[illegible] the strict [illegible] laws Pl. 23
[illegible] is strictly a [illegible] process and
the rules of [illegible] according to Wm Jones
constitute a most [illegible] system of legal logic

Every good declaration is a good syllogism
[illegible] so — the [illegible] put in form, wherever [illegible]
[illegible] the [illegible] are in the situation of the
[illegible] about to construct syllogisms.

Ex. In case of [illegible] against [illegible]
[illegible] possibly entered on my land. There a right to
recover damages, 19 Law. The Def. has possibly entered
on my land. Therefore I have a right to recover
damages of the Def. 1 Burr. 319 3 Bl. 395 n. Lil. Ency. 29, 84,
175, Com. Dig 184, 5, 234. 2 Ch. R. 27. 274

The first or major proposition is not usually
expressed. Formerly it was, it need not be recovered
because the judge being supposed to know the L. the
expression of it is of course superfluous

Particular customs and private sts. must
however be pleaded like any private document.

The major proposition contains the legal prin-
ciples on which the Plf. relies

The minor proposition states the facts to which
the principle applies in this particular case

The conclusion is an inference of Law from
the application of the law to those particular facts

In the Law is [illegible] the major proposition or the
issue principle is to be denied, an issue at L. which
[illegible] is called a demurrer, as since the proposition is
matter of L. the issue must also be matter of L.

The minor proposition must be denied by matter
of fact i.e. by defence or special issue

The conclusion can be drawn in neither of these ways. For if the major proposition be true in point of law and the second in point of fact the conclusion is inevitable. Suppose then both true. The Defendant rest upon some fact external, say alleging some new matter of fact

or he could plea admits the L. and the fact, but alleges some new matter and a negative conclusion

The plea of release is as follows. If the person upon whose land I have lawfully entered releases to me his right of action, he is debarred from his right to recover damages. What he has released to me this right of action; therefore, he is barred of his right to recover damages from me. Now this may be true, but on the bill of the same nature may be now brought in the Ct. He may demur to the principle or allege that the release was obtained by fraud, or non est factum

The great object of this process and course of all pleadings is to simplify the grounds of controversy so as to make the suit depend as much as possible on a single point and thus facilitate the administration of justice

This is a short description of the general nature of pleadings

The first stage of a suit is the [illegible] Distinguishers in regard to the pleadings. It is a matter of convenience directed to the object to compel the Ct. to decide and [illegible] answer the charges alleged. 3 Bl. 27. 1 Saunders 103. 11 Co. 40. 7 Term R. 1 Bl. Ep., Earth. 233. This is a C. Point

and will remain forever "en passant" that where a suit is commenced, yes in Ct. to a trial; the trial is coeval with the commencement

This is in fact a declaration [illegible] a fictitious, not called "Statutes"

[illegible]

[illegible] the date of the writ and the [illegible] The time of the writ is [illegible] to [illegible] a [illegible] of [illegible] of the [illegible]

[illegible] the cause of action must exist at the time of the writ issuing. 1 Ins. 005. Wh. 147. 5 B. 173. [illegible] 2 Bro. Ch. 233 Com. 454

In the English practice and that of most of the U.S. the writ issues first and the declaration upon the return of it. But in Conn. the issue is the first step of the suit & the writ is the next step in the proceedings & the declaration

In the "Court" requires one to [illegible] the service of "summons and complaint" [illegible] Stat. 2. 180. But in Conn. the writ is not considered as commenced to all purposes until the service. Rev. 480

Nature of Pleadings Declaration

The code to declare the is an abbreviation of the writ, adding the circumstances of time and place. The writ expresses the general complaint, the count expresses that complaint with particulars. Stat. 1, 2 D.B. 203, 304 and in 354 and 2 Q. 7. Stat. 5

The next stage succeeding the declaration is the Plea. For it is due notice to answer, judge or decide [illegible] + Stat. 1, 6. Stat. 1, 2 D.B. 200. 304

Pleas on the part of the Def. are of two kinds 1. Dilatory pleas 2. Pleas to the action. Pleas to the action are [illegible] and [illegible] pleas are [illegible] terms

Dilatory Pleas

I. Dilatory pleas are such as serve to delay the suit by questioning the mode in which it is [illegible] rather than by resisting the Pltf's ultimate right to recover, and tend if successful, rather to the writ

Dilatory pleas are divided in some commentaries into four or five heads but they might be comprehended in the following classes

1. Pleas to the jurisdiction of the court
2. Pleas to the disability of the Plf.
3. Pleas in abatement properly so called

They are all minutely divided by Queen's Laws

All dilatory pleas are merely called matter in abatement, but improperly for there is a material difference Bac. abt. Ab. Laws 5. Be 502 note, Tidd, pag. 572

4 Pleas to the action These answer to the merits of the suit always denying the Plf's right to recover on the cause of action. The cause of action may be denied in either of the ~~two~~ following methods

1. By denying the allegations of the Plf.
2. By confessing and avoiding them: this is matter in avoidance
3. By pleading matter of estoppel. This neither denies nor confesses the Plf's allegations 5 Bi. 508, 5. 6 Laws 5 38, 115, 30, 40

Pleas to the action which deny the complaint are of two kinds

1. General issue
2. Special pleas in bar

They are both however ~~special~~ "pleas in bar", the one special the other general 5 Bi. 505 Bac. 54

These are the only modes of denying the pleas to the action

The cause however may be ~~demurred~~ denied demurrer by a demurrer But the demurrer is not a plea It is a denial of the Plf's right to proceed against him: it is the minor premise: major proposition in syllogism.

The Def. denies that he is bound to plead and and prays judgt whether he is bound or not Laws says that a demurrer is an irregular mode of pleading: it is an excuse for not pleading

917.a.

[illegible] cannot be expected to [illegible] [illegible] [illegible]

III [illegible] facts alleged the law presumes a promise, that promise must be expressed 2 Rich 793 Lawes 49. 1 Lev. 164 Thus in an action of trover it is not sufficient [illegible] to allege a demand and refusal. The plea must express a promise to [illegible] upon demand [illegible] 1 [illegible] 160 2 [illegible] 003 [illegible] 010 2 [illegible] 63 note + [illegible]
2 Rich 793 [illegible] Cro. C. 413 Conversion in Trover must be alleged

To the case last stated there is one single exception

In a bill of exchange it is not necessary after all the facts are stated, to state a promise on the part of the drawer: this is the law though the universal practice is to conclude with a promise. Salk. 128

Ld. Holt says that drawing a bill is in fact a promise. J. G. however thinks the proposition altogether arbitrary. Post 12 n. [illegible] 224. 2 [illegible] 68 note

The next rule requires qualifications Post 21 2 [illegible] 318 + Bac. 2 3 Leon 300

III It is necessary that all that was pleaded be direct and not argumentative or in the way of re[illegible] or stating by way of inference [illegible]

[illegible]

[illegible]

1. [illegible]

2. [illegible] issue upon them

[illegible] it would be insufficient 8 T. Rep 278 Lawes 75.6 131.24 175.6 [illegible] 126 [illegible] 303 Bac. R. + [illegible] 233. 1 Saun. 117 n 274 n [illegible] 383. ~~Vide Post 21~~ 7 T. R. 458

[illegible]

[illegible]

[illegible]

[illegible] "that" [illegible] "said" 1 Saun 274 n 1 & 4 [illegible] Hob. 121

Claim "because" is sufficiently direct to introduce a material fact: so also the words "without" "subject" 1 Saun. 57 2 Lev. 176, 8 Eng. Ca. 383 Laws 64, 64 Laws 49, 134 2 Bac 447 1 Lev. 203 2 Ch. R. 197

II. Each party admits of course so much of his adversary's allegation as he does not deny or notice. [illegible] allegation as he does not deny.

The parties in making argumentative allegations [illegible] each case a right to deny, if they [illegible] not. This right is taken away from allegations which [illegible] not deny. Hob. 94 [illegible] Hob. 234 Laws 52 1 Wil. 338 4 Bac. 2. 79

V. Each party's plea is to be construed most strongly against himself, [illegible] [illegible] each party is presumed to make the most of his own case Hobt. 234 Co. Litt. 303 Latch 186 2 H. Bl. 590 4 Bac. 2

VI. [illegible] 69 Cro. J. 189 Cro. E. 88

[illegible] 4. B. & C. 501 [illegible] 501

[illegible]

In transitory actions it is not necessary to allege the time and place

It is not necessary to allege the place in an action not transitory

There is a distinction between allegations of place in a local description and allegations of a mere place of venue

If it is alleged that B. committed an assault on the town of C. in the county of D. it is not necessary to prove it, the place being alleged in this case for venue merely

But if it is alleged that B committed the assault in the house of E. F. in the town of G. it is a local description and must be proven

VIII. The number, quality and price must not be proved except when a material averment occasion a variance

A variance is an inconsistency between what is alleged and a written contract, and the evidence, if there is no written contract

Thus it may be alleged that the Defendant received an hundred barrels of flour and if upon trial he should prove but five, still the declaration would be good for it would occasion no variance

But if he declares on a written contract and states it different from its true meaning and intent he does it at his peril

But in a contract if A. sues B. on his special promise to pay him $100 — and proves a promise to pay $100. or $90 the evidence would be inadmissible for it would occasion a variance

But even in mistake occasions no variance an account of a court is not necessary. Laws 49, 171, 2 East 233

It is a maxim in pleading that mere surprise does not vitiate the plea "Petitio pro per incuria non vitiatur." But repugnancy does vitiate it. [illegible] "Rep. cahet 52 may die cause it should be [illegible] There is a distinction here.

Repugnancy in a material point or in a fact in substance and is an incurable fault, but repugnance in an immaterial point is a fault only in form and advantage can be taken of it only by a special demurrer. Laws 08, 4, 5 170, 2 East 313 Co. Litt 308 (4) 4 Co. 42 Cro. Jas. 537, Carth 288, 9 Mod. 294

VIII Wills should be pleaded according to its legal operation, tho it should vary from the common structure of the thing.

Thus a mere joint tenant should convey his right to his co-tenant in case of surrender; the surrender is not to be pleaded as such but as a release 1 Ed. 4 46 Cro. 500. Com. Dig. Pleader 6. 1 Ft. Bl. 313. 2 Ft. Bl. 11 Co. L. 199 (d) 209 (b) La. Ray. 400

Land devised to a person and his heirs must be pleaded as such tho it should be a trust not a fee, as that is its legal effect 3 T. R. 52, 451 Ch. on Bills 85-7, 234

Though it is true that every thing should be pleaded according to its legal effect, yet the rule is not strictly universal, for it has always appeared to me that a contract may be pleaded as it is and the Court can decide in what manner it shall operate, but it is more convenient the way is pleaded according to the legal effect of the instrument 2 Ft. Bl. 11. Doug. 642 1 Ft. 313

IX. That which appears sufficiently obvious from the record need not be formally averred

Thus if Ct. sues B. in trover for taking and converting to his own use B's Spanish milled $ it is not necessary to allege the value, for that appears from the record 7 Co. 40 9 Co. 54 a & b 11 Co. 25(a) 2 A. & E. 7 Co. Lit. 303

X. When necessary circumstances are omitted in fact it is unnecessary to allege them Co. Lit. 303 a 1 Saun. 228 & 2 Saun. 305 (a) n 13 Cas. 9 Jones 98 2 C. & K. 4

Ex. Pleading a recovery in Ct. where a seisin is pleading perfect, and it is some what singular that Buller should state that ex. in which the verdict would cure the fault when in fact no fault is in the proceedings; the livery of seisin need not be expressed for it is implied — This observation has been frequently made and I am surprised to hear it from Jl. Buller who was the most perfect speaker on his class Sal 91

The error arising of record need not be formally averred Co. Ins. 262 a-3 7 Co. 40

XI. Remember matter of fact and matter of Law so that the question of seisin or no seisin when on that pleading is end pleading

Ex. Suppose a Ex. asserts that he is alone entitled to all the assets possessed by Felons in a certain country

This involves matter of fact and matter of Law. For the fact is dependant upon first ascertaining what the L. is. Sal. 91 9 Co. 25 (a) 2 Mod. 56 Lawes 138 4 Bac. 08. n

XII. That admitted by both the parties in pleading, cannot be afterwards contradicted. Even a jury cannot contradict it by a verdict, for they have no such power. Bul N.P. 284. 2 Mod 5, Lawes 48. 4 Bac. 2

XIII General estates in fee simple may be alleged generally i.e. he may aver simply that he was seised in fee simple without declaring how or in what manner.

But where a particular estate is pleaded to commence and made accounting special, it must be pleaded. The reason of the distinction is not obvious but appears however to be this. Co L. 303 (b) Cro E. 938. 3 Bul. 72. Ld. Ray 331 333, 4 Cod 502. A General estate may commence with a tort (i.e. disseisin) and this tort is a matter for the jury to find. But a particular estate cannot so commence it is always supposed to ~~commence~~ be acquired by some legal title.

The method of acquiring it is therefore known & must be stated with the time and manner of obtaining possession.

In the declaration a general mention of a particular estate may be affirmed.

But when the particular estate is denied and pleaded in any pleading after the declaration the time and manner must be stated specially. Ld. Ray. 331, 3, 4. 3 Bul. 72. Cod. 502. Coke 303 (b)

XIV It is a rule that immaterial averments when contradictory from immaterial averments must be proved as they are alleged, but immaterial averments need not be proved.

The rule is this

~~"Free impertinent aver-ments~~ "Where a variance results from not proving it, it is necessary to prove it.

It is said that the rule of proving immaterial averments extends only to the record as and ex written contracts, (Doug. 640 n 669 note) This note as I conceive is erroneously expressed, it should be express contracts 2 Bl R 1104 Bul NP 7

The following case is in point

It simmons brought an action vs the Sheriff for taking all the goods from the premises so as to leave none to say the rent of the tenant

He deduced his title by asserting that the tenant was to say so much rent semiannually. This latter clause was an immaterial averment and unnecessary to be stated It was not however true But it being necessary to prove it when once stated he lost his suit 1 T.R. 235 2 Ch. 331 2 East 446. 9 Doug. 640 669 n. 2 Bl. R 1104 5 E 33, 521, 3 T.R. 643 2 M.S.N. 501 Bul N.P. 1 Ch. 300. 2 Saun. 207 n 4 E, 521. Immaterial does not mean impertinent nor unnecessary. An impertinent averment is foreign to the case and need never be proved and can be stricken out without injuring the declaration at all, but if it cannot be so stricken out it is immaterial

The contract should not be falsely stated and if it should be it creates a variance whether the contract be written or parol (as I think)

A parol contract may be a special contract as well as a written one. Doug. 640 669 is an important case, by referring to it we may see an instance of the distinction between an impertinent and an immaterial averment

XV. If the declaration wants form only, or the other pleadings, as if they omit the venue or commencement of time and place and the adverse party does not make special demurrer, but pleads over he cures the defect Co. Litt 303 Cro. 510 1 Ven. 222 1 Lev. 25 (a) 8 Co. 120 Carth 06 4 Bac. 2

By substance is meant such matter of fact as constitutes the ground of action. It is the foundation of the declaration and defence and matter of form is merely the manner of stating the defence 1 Lev. 95 3 Lev 81 Carth 526

XVI. Argument said that the matter not alledge and then mere fact will amount to a sufficient of action. "Prima facie" 2 Mer. 100 2 Burr. 1037
or a suff. defence

Ct. parte pleading is not bound to anticipate what may possibly be asserted in defence

Ex. It is sufficient for it, for to declare that B. at such a time and place owed to have said him a sum of money B. may have been an infant. Still it does not alter the ground of action. Same rules as to pleas in bar

This rule does not hold as to pleas in abatement and estoppel For an ex. see authority quoted L. Raym. 400 1 Saun. 296 Because these pleas are odious to the Law

§ XVII If the pleadings on one side express a material averment which the other omitted, it cures the omission 5 Bur 19, Cro 21, 182, 5 mod. 84 Com. Dig. 85 Cro. 3 Jac 1 Ro. 555

ex. The Plaintiff says that the Def. B. took from a certain inn a certain iron iron without averring that he took it from his possession, the B. instead in demurring reads that "he did take". It cures the omission

* "the iron from the person of"

XVIII Per matter alleged in any stage of the proceedings after the declaration must conclude with ~~an averment~~ a verification or averment as it is called 3 Bl 309, 10 Lev 77, 8, 9

Other matter is whatever is pleaded on one side by way of avoiding the previous allegations on the other

It is whatever is pleaded except a denial of the allegations, one exception in the Eng. St. 5 Geo. 2. in case of pleading of Bankruptcy Laws 115, 22

He cannot put himself upon the country the verification is the established mode of ending the pleadings then

Why is it necessary that the new matter should be concluded upon and put upon? Because in every successive stage the adversary must have room to reply in either of these three modes

1. ~~By the Exception~~ By denying
2. By stavoiding and confessing (confessing previously of course the averment)
3. By Demurrer till a proper issue is tendered

Cam 103 m. Lev. 575 2 Bur 1772 Doe 58 Laws 49, 74, 85, 9 Ch. 243, 4 Laws 150, 8

[illegible] a special plea in bar
[illegible] or either of these under without
[illegible]

The answer to the declaration is called a plea
in bar, the answer to a plea in bar is called the
replication, the answer to the Replication the Re-
joinder the answer to the Rejoinder is the Sur-
rejoinder the answer to that the rebutter the
answer to that the surrebutter 4 Bac. 6 Col. 304
3 Bl. 310 Ed. Rep. 499 Cha. 422 Bull NP 17

The number of the pleadings is most limit
& rapid pleadings has ever been aimed

The object of a plea in bar is to repeat the
declaration

That of the replication to ~~defeat the plea~~
portion the declaration by repeating the plea in bar

That of the rejoinder to portion the plea
in bar by repeating the replication and so on

The object of each is to portion what be
fore side by repeating what is advanced by his ad-
versary

Pleadings not answering these purposes
are void for each party must adhere to his origin-
al cause of action or defence

The pleadings being closed whether
they terminate in a demurrer or an issue in
fact, judgment must always be given on the
whole record & not on any single or detached
part of it

Thus, if the declaration and bill of exceptions are both good and the plaintiff demurred to the latter, will the judgment on the demurrer be reversed? Yes, if the bill of exceptions is still good, notwithstanding the declaration.

So held in all the Different States, if the pleadings joined will admit of it, the reversal has the first material defect. 2 L. Raym. 800, Inst. 304 (a) 1 B.C.C. 2 T.R. 280 1 Saund. 285 Lev. 173 Hardr. 200. 8 Co. 120. 33(b) 9 Co. 10 Sh. 240 or 3 4 Bac. 7

## 7 Of the Declaration or Count

Declaration

The declaration and count are in the law generally treated as synonymous, and where the suit is on only one cause of action and makes but one statement they are so. But when there are different causes of action declared upon, or one different statements made, each separate statement is called a count and all the counts taken together the Declaration 3.B.C. 295.

When there is in fact but one cause of action we often find several counts. The object is to insure for any possible contingency of witnesses and so enable the Pl. to recover a verdict, if he is unable to prove his allegations and if he can prove any one of the counts he will be entitled to judgment and must recover "secundum allegata et probata" is called the foundation of the suit, hence it

The declaration must state every fact which is material to the cause of action and these facts are called the "gist" For nothing can be proved which is not alledged - and unless every thing alledged is proved, he can not have judgment 3 Lev. 68, Inst. 17 a Chit. 283, 5 Chit. 99. 4 Bac 6, 13

If the declaration concludes [illegible] [illegible] that the Plff at the commencement of the suit had no complete cause of action, the court cannot [illegible] [illegible] on the verdict [illegible], 307 [illegible] [illegible] 2 Bl. 323 Burr. [illegible]

Thus it is a rule [illegible] [illegible] the Pl. state the date of the bond or date of judgment to be after the [illegible] the [illegible] it will appear on the face of the declaration that the Plff. at the commencement of the suit had no right of action Cowper 574 [illegible] 0,54

A judgment for the Plf. in this case would be erroneous - even after verdict the defect is incurable Cowper 574 Cow. 454 3 Bl. 2?3 7 T.R. [illegible] Doug. 61

From what time a suit is said to be commenced 3 Bl. 2?3 Cow. 454

But if a party bound by a contract disables himself to perform, he may be sued before the time fixed, as if A covenant to convey certain lands to B. in 3 months and before the end of that time he conveys them to C. 4 or 5 Co. 11,2 5 Co. 2,12

The omission of any fact which is essential to the right of action is an incurable defect 5 or 8 Mod 305 4 Bac. 8 3 Bl. 395 Doug. 658 or 671 10

The Gist of an action is that without which there can be no cause of action, In Assumpsit the Consideration, in Trover the conversion is the Gist

It is any fact which is indispensible to the right of action See Arrest of Judgt

If there be such omission the Def. may demur Lawe. 67. 618. 658 4 Ter. Rep. 472 5 Co. 12 a

And if the Def. even needs to issue he may arrest the point or traverse, which he may bring a writ of error 1 T. Ra. 675 2 Y. Bl. 317 2.1 3 Bl. 395 4 Bac. 8

(Jur.n

It follows then that when a Plaintiff or action must aver the performance of a condition precedent the Def. must aver the performance of that condition or that the Plaintiff prevented him 7 T.R. 125 1 East 203. 8. 619 Com Dig Pl E 51 1 Saun. 319. 20

Thus if I promise Ld. $100 on condition that he should build him a house, Ld in suing for it must aver that he has built the house. The averment that he has not paid the money without more would be insufficient the omission would be immaterial 1 Saun 309 1 East 203 Salk 309 Ld. R. 310 3 Bl. 395 7 Bac. 254

But when the Plaintiff's right of action is modified by a condition subsequent he is not bound to take notice of it 2 H. Bl. 240 Bro. 650 7 Co. 10 7 T.R. 125

A condition subsequent is not matter for the Pltff. but for the Def. to aver upon

Thus in an action on a penal bond conditioned for the payment of $500 the Pltff. is not bound to take any notice of the error of the condition, but may declare upon the penal part of it Cro. Ja. 900 Norton Com. Dig 9 5 Co 10 Hob. 88 2 N.R 240a 1 Ven. 177 2 Mod 309 Com Dig Pl E 54 7 Co 10.11 1 T.R. 638 2 H. Bl. 574 1 H. Bl. 254

[illegible] an instrument [illegible] covenants [illegible] [illegible] [illegible]

# Certainty

It is requisite that a declaration should be accordingly certain.

This rule applies to the count, it is necessary

1. For the plaintiff to show what he asserts
2. So as to come issue to be tried
3. For the defendant to know what to meet
4. Hale is of opinion that the plaintiff may be enabled to plead the judgment in bar of subsequent action for the same thing 5 Co. 34 & Bur. 2756 Sec. 11 ... 1 Rol 72 Lev 313

Sec 11

The certainty required extends to matter time place and subject matter Co. 1-303 (d) 1 Co. 35 Co. 6 Co. 1 Bur. 272

In describing the subject matter the law requires no greater certainty than the nature of the subject will reasonably admit of 2 Lev. 74 5 Co. 34 Co. 3.17 Lev. 128 1 Ra. 61 Ex. Ct. brought an action against B. for a certain fish and said" - This was all the declaration - Judgment was given for defendant in error but notwithstanding it was ruled

In Error on Books to describe the title in the library of books" - [illegible]

On the other hand - an action was brought for fish, stating some fish" - This was insufficient

Again "seven pieces of linen" was insufficient 5 Bur. 272 5 Co. 34 2 Show. 243 Trover lies where it is more definite than "a pipe and skins"

In assuming this rule of certainty the subject must be in general referred to the popular sense of the ct

[illegible] is [illegible] times are more likely than [illegible] in meaning more in excluding certainty
2 Comm. [illegible] Bro. C. 8 [illegible] 5 Bac 272 [illegible] 28
2 Com. 273 [illegible] Rec. 88, 140 Dow. 207 5 Co. 34

[illegible] is not the subject of the jury can know what is meant from the description Co. Litt. 5th Inst. 59 5 Bac. 195, 0

In allegations matter of inducement or aggravation the rule is less strict neither of these is the gist of the action and they are never traversable rules 7, 72, 118

Matter of inducement is that which is introductory to the principle or material subject Inst. 68 7th part, which is necessary to explain or introduce that subject or [illegible] 1 Co 21

Matter of aggravation is that showing the circumstances of enormity, which extend the action Lawes, 74, 115

The law and pleading in Trover is not matter of inducement

The issues and Battery therein mentioned and action are matter of aggravation

The one is explanatory the other substantial therefore to enhance the damages Lawes 72 115 00

In case of tort there may be circumstances of aggravation which would increase the damages

In contracts strictly speaking there is no matter of aggravation

There is an [illegible] of [illegible] words contradictory reference such as "aforesaid" "said" etc which do not import sufficient certainty if there is more than one antecedent to which they may refer — In such a case the word first" should be inserted.

Ex. Suppose there were two counties mentioned and the expression was the aforesaid county (Sect n this would not sufficiently ascertain to render it certain — The expression should be "the first" or "last aforesaid" as the case might be 8 T.R. 178 2 Ld Ray 888 Com D. Ri. c. 8 cre. E. 267 2 East 66

A declaration may be bad in part for want of certainty and good for the residue even tho' there be but one count 2 Saun. 117 Cro. 218 1 Saun. 250 and 2 R.C. 83 Laws 59 Sect 22

Ex. Suppose in the action of covt broken two breaches are assigned one sufficiently, the other not, he may recover on one though not on the other —

This rule is a portion true when there is more than one count Com. Dig. E. 32 1 Roll 218 1 Saun 280 2 Saun. 379 Laws 59

Although they cannot regularly be taken of mistakes in the declaration by shew in statement — The Def. should demur 4 Bac. 8 Sal. 212, 20 1 Show 91

Except where there is a misnomer in the declaration

If one declares on a contract to the validity of which a deed is necessary by the C.L. the deed must be alleged and he must describe the deed 6 Co. 58, 4 B 2 Wil. 374 1 Ld Ray. 54 Sal. 579 Bul. N.P. 279 Comp. 289 4 Bac. 650

12

[illegible] must [illegible] the writing [illegible] necessary to the validity of the release

This is made necessary by the rule which requires every contract to release which is essential to [illegible] of action or defence

But to the C.L. action is necessary to the transfer of the [illegible] right

The rule of the civil law the consent of contracting parties is sufficient to the C.L. but which is required [illegible] in writing Cow. 287

He must then prove the instrument which is the foundation of the action and without which [illegible] [illegible] the action upon the note [illegible] to sue

But in declaring on a contract which is made without writing he is not obliged by St. to state the writing or to mention it, but it is sufficient if he states it in evidence, and it is altogether unnecessary to do so Bac. 13 + Ric. 055 3 Burr. 1690 2 Mod. 175 Cro. 280 Bac. [illegible] 2780 Cal. 5. [illegible] Trau. 202, 4 Root 92 146 *But when the St. requires to be in writing

In the latter case the writing required by St. is not an instrument constituting the action, but mere evidence of the "Parol" which is the foundation, and it is not necessary at C.L. to found the right. Thus the contract should be in writing and as the St. requires the writing as mere evidence, the rule at the C.L. still remains the same as the St. has introduced no new rule of pleading, but has only altered the rule of evidence

In the case of a grant or devise the writing must be declared upon for it is the foundation of the action

[illegible]

Sect n

[illegible]

[illegible] Rec. 450

[illegible] is some cases special in some cases [illegible] Sec. Stat. 84 - Stat. 8

[illegible]

Sec. 4 R. 4

[illegible]

Sec. 04 L. 4

[illegible]

[illegible]

[illegible]

[illegible]

2. [illegible] Sect^n.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Oct 27 1 Decem. 1919

Dec 9th 1 Decem 1919

3. [illegible]

[illegible]

[illegible] 4 Bac. 10 Bulk. N.C. 5 4 Bac 511

4. [illegible] 14
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Where the cause of action arises for an injury, the [illegible] must be joined with "[illegible]" [illegible] may be joined or severed at the discretion of the court [illegible] Latch 262 Hob. 6 Bul. N.P. 5 3 Br. 117

[illegible] Joint [illegible] may be sued or severed, at the discretion of the court [illegible] Hob. 6 [illegible] joined or severed 2 Burr. 988 2 T.R. 199

Sever.

When there are two distinct torts committed by different persons in several ways, the [illegible] in one action, [illegible] persons be joined in one action, or [illegible] committed by them severally.

12. If A & B shared a trespass at the same time on the land of C, the [illegible] in one action for the trespass

or if C & D shared at the same time and [illegible] land of C, [illegible] in one action. [illegible] "[illegible]" or one is charged on the persons of two or more persons at different times [illegible] 2 Lev. 38 [illegible] 6 [illegible] Bac. 15 [illegible] 2 Term 90 [illegible] 303 Bulls [illegible] 4 Bac. 10

When two or more join in a contract they must be sued jointly

15 2 Burr. 988 [illegible] When two or more persons are interested in a contract joining in several [illegible] or severed at the discretion of the [illegible] Bac. 1, there are [illegible] 20. [illegible] not be sued [illegible] rest [illegible] joint [illegible] 20 [illegible] 2 [illegible] 20 [illegible] (e) 3 T.R. 182 3 Bac. 385 [illegible] 233

[illegible] deceased, [illegible] by the [illegible] of the [illegible] [illegible]

[illegible] a promissory note "[illegible] promise to pay" [illegible] joint and several [illegible] [illegible] 2 [illegible] [illegible] 5 [illegible] 2011

If two persons are bound in a joint bond and one dies his executor is not liable at L. to be sued with the other as defendant, he cannot be sued alone nor jointly with the ~~other~~ survivor

At Law the creditor's legal remedy is confined to the surviving debtor

But the executor is bound to see the survivor [illegible] for the debt of his testator [illegible] 400

But if two or more persons bind themselves jointly and severally the effect of the obligation is the same as if they bound themselves distinctly [illegible] 27 of [illegible] 3 [illegible] 557

Here the ex'r may be sued distinctly but not jointly, for the reason assigned above [illegible] (Bac. 400)

When an action is brought by executors, only those can be joined who have proved the will, but the deft is bound to join all those engaged in administering the estate. Chan. 20, G. [illegible] 3 T.R. [illegible] Comyn [illegible]

# Of Joinder of Causes of Action

[illegible] causes of action [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Provided, the parties in each such cause of action, sue or are sued, in the same [illegible]n capacities [illegible] [illegible]?

[illegible] causes of action [illegible] [illegible] nature [illegible] [illegible] either capiatur or misericordia.

[illegible] [illegible] "misjoinder" [illegible] [illegible] [illegible]

On the other hand [illegible] [illegible] [illegible] contract [illegible] [illegible] Bac. 30 2 Wil. 3.0 [illegible] Bac. 101 [illegible] R. 216 1 Wil. 259

*

But when there are several [illegible] of the same nature [illegible] "misjoinder" [illegible] they must be [illegible] in the same [illegible] [illegible]

But when different causes of action require different judgt. [illegible] Bac. ab. [illegible] 3 [illegible] 2 [illegible] 40 [illegible] [illegible] not [illegible] at 244 4 [illegible]

* The above rule is general but not universally true

[illegible]

[illegible] 282 [illegible] 300

[illegible]

[illegible] principle [illegible]

[illegible]

[illegible]

[illegible] issue between [illegible]

[illegible] issue [illegible]

[illegible]

Ex. If a Pltf sues or the Deft is sued in one count in his own name and capacity and in another as an executor there is a misjoinder

L— Our Books have it as a [illegible] that [illegible] or Ejectment and Assault and Battery may be joined [illegible] 249 [illegible] I conceive that they cannot from the rule peculiar to the action of Ejectment and the fact that the nominal Pltf is not the real one and the real one in ejectment will not [illegible] otherwise [illegible] the record to be the same person as the Pltf in the other count. Sect.n

If this case is not an exception to the rule which governs the question it is not then the rule is [illegible] 252 [illegible] 3 Bl. Rep. 845 [illegible] 252 2 Wils. 314 3 East 70 / [illegible] 3 [illegible] 947.5 All actions on the case may be joined

Trover and slander may be joined in one declaration and to these may be added an action for malicious prosecution in different counts [illegible] 652 [illegible] any number of cases arising ex delicto may be joined [illegible]

Where different causes of action require the same judgment [illegible] or issues [illegible] but not universally true [illegible] the judgment must be the same [illegible] various exceptions

The action of [illegible] may be joined [illegible] Dec [illegible] Keb. [illegible] 4 Bac [illegible]

Different causes of action [illegible] the same [illegible] accruing to the same person [illegible] capacities cannot be joined [illegible] 55 [illegible] Bos and Pul. [illegible] 10 [illegible] 670 [illegible] 4 Bl. 280 [illegible] 1271

[illegible]

[illegible] Ex. 271.

[illegible] on the different [illegible] The [illegible] is analogous to that of the rights of action existing in favor of the several persons. [illegible] is an individual [illegible] the [illegible] of the recovery [illegible] the same liability is, in the persons

[illegible] and received to the use of [illegible] money be joined with one of money had and received for the use of the testator. The money demand to the same fund, nominally for different [illegible] but actually the same Dent 154, 104 3 T.R. 050 Causes of action of the same nature cannot be joined as the same person in different capacities

[illegible] the other hand, the rule that causes of action in different [illegible] cannot be joined is [illegible] Doug. 652 2 Wils 319

Contracts and trespasses cannot be joined with trespass or [illegible] Ex. [illegible] and [illegible] are [illegible] Rec. 90 [illegible] 10 and see [illegible] [illegible] of the same [illegible] joined [illegible] Gen. Rule

[illegible] Trespass "vi et armis" be joined with 18 trespass "ex delicto," [illegible] "ex contractu" [illegible] 5 Rec. 90 [illegible] 2 Wils. 319 Gen. 300 2. Rec. 114

Here the rights of C. & D. are different, the trespass "vi et armis" and trespass "ex delicto," the contract [illegible] of the [illegible] are different, This is an exception to the action [illegible] of the general rule Rec. [illegible] 3

Contracts and torts of any kind cannot be joined in any case in the same declaration and not in tort not committed with force the judgt is the same, but the special issue is different 3 Mod. 20 3 Mod. 22 Ld Raym 30 4 Mod. 2 1 Ven. 206 2 Wil. 319 2 Burr 1114 Doug. 1 Ld 247 Carth 87 Raym 33 L. 255

Accn

Debt and account cannot be joined for requiring the same judgt. The decs and the plea issue are different and further the proceedings are entirely different 4 Bac. 1 Mod. 42

An action of account can never be joined with any other action whatever. There are two judgts to be given in an action of account, the proceedings are "du renere" Mod. 42. Bac. Ab. Tit. "Pleadg" 1

An issue of debt is to be tried by jury, whereas an action of account is to be tried before auditors. It is absolutely impossible to join them - the principal issue is to be tried by two different forms

In short the distinctions appear to be these

I When different causes of action require the same judgt and the same general issue they may be joined without exception, provided the parties are the same in both and are all on record in the same capacity

[illegible]

[illegible] when the facts are different [illegible] [illegible] [illegible]

as a matter of law stated in a separate count
& cannot be joined with other pleas
to prevent the right of recovery

It is a rule in declaration that cannot
be joined different causes of action in one
and the same count, to enforce one entire right of recovery (Rect^n)

Duplicity is a mere mistake in form

Thus if a Pf. should insert (in suing
on a note obtained) in one count the action
and also a course of dealing. The joining of
several causes of action which accrue to the
destined appointment be joined is an incurable
fault, & the Def. may safely demur, or arrest
judgt or obtain a writ of Error

The reason that a misjoinder of pleas
is this In no action can there be but
one final judgt. If a Pf. then obtains a
judgt verdict on both counts and claims
judgt on both, he cannot have them, for
a judgt adapted to one is not adapted to
the other, and the Ct. have no right to se-
lect one judgt rather than the other. 1 Dr.
108 1 Dall. 10. Carth 486 8 Ewi 185 Stra 1202
Carth. 113 4 Bac: 11

It has been a question whether a
declaration for trespass which asserts that
the Def. B. entered with arms the Pf. B's house
and beat his servants whereby he lost their
service, is good

It is not settled in the affirmative, for the law is more matter of convenience and the dilatory consequences 3 Ves. 20 2 Ch. 313 2 T.R. 107 3 T.R. 202 Cal. 642 3 Bac. 4th 555

If the "non quod ts" were omitted the declaration would also be good and the Ct. would consider the whole as the bringing in one entire cause of action 7 Bac. 2 Lev. 113 2 Wils. 313, 20 Cal. 642 Cp. 41 Ama 43. 202 7 Bac. 555 3 Wils 20

Where there are several the same parties different causes of action and different questions which admit of being joined. The joinder is not incorrection but effect with the Ct. They may be sued severally

Or in such case the court may compel a joinder, this is a discretionary proceeding there is no rule of L. requiring it

But when the causes are of the same nature arising out of the same evidence they will generally order a consolidation

This is to prevent the Ct. being unnecessarily burdened with suits and harassed by a multiplicity of suits Cowp. 247 2 Cal. 634 2 Bac. 1149 1178 3 Wolf

The court in such cases is to make the Ct. pay the costs of obtaining 1 Cl. R. 100 Bac. 2 157 2 Bac Cp. 2 T.R. 630 1 Cl. R. 60

According to later opinions in minimis the plf. may be permitted to amend by striking out one, or nolle prosequi 1 Chitty 250 n. "But which is rule of the decisions is not. pros. 4 Bl. 108

Before demurrer he may or may not enter a nol. pros; and it seems now to be the opinion that he may enter a nol. pros. or amend by striking out even after demurrer 3 Bos & Pul 1 B. & A. 15 [illegible]

The rule formerly was that after the misjoinder had been demurred to the plf. could not enter a nol. pros. 1 H. Bl. 108 4 T. R. 347, 60 Lum. 485 n

The doctrine of misjoinder has been stated to depend upon the diversity of judgments

In Conn. there is no capias or misericordia The rules of misjoinder obtain here as elsewhere They are necessary in order to preserve a distinction between different causes of action In other states and in Pennsylvania all judgments are the misericordia 5 Bac. 191, 121, 3

## Miscellaneous Rules

The declaration must agree with the writ. The writ announces the cause of action in general terms. The declaration specifies upon it: the declaration must therefore agree with the writ. But if the writ expresses one cause of action and the declaration with

or for instance when the writ omits the action trespass the Ct. cannot amend in case) it would be a variance Bac. ab. Tr. Not. 30

The Ct cannot decide on a declaration varying from the writ Lev. and Ca. 54 2 Lev. 95 Carp 2

The rules of practice in Eng. will not allow a Def. to take advantage of the contrary exceptions, but will not allow the writ to be produced in engagement cum

When the declaration does not agree with the writ the diversity is called a variance

It has been said that the facts which constitute the cause of the action must be distinctly and positively stated Stra. 621 Bac. ab. Tr. 5 Co. Litt. 303 2 Wil. 203 2 Ral. 636 4 B. Mars. 96

If it was stated "whereas etc" it would be bad pleading it does not attain that certainty which is required. The language of a good plea can never be mistaken Dow 6

It has been decided that a verdict for the Pltf. would, in such cases tho not cure, avoid the bad declaration, for what is the objection to it, it is only in form, the circumstances of the case may all have been truly & clearly stated, tho not in the form required 2 Raym. 358 Str. 316 1 Wil. 99

A declaration stating that at a certain time and place Brought to sure said a certain sum of money sufficiently good pleading

2 Burr 355 Lucas 60 2 Saund. 201 Ca 232 403 Lucas 48 Bro 8, 20

When there is a remunerant warrant under a vis the warrant is good only on a special demurrer which is a waiver of special general demurrer 1 Saun 186 117 Hob 194

The rule requiring material facts to be pleaded and directly in issue does not hold as to the declaration of [illegible] facts [illegible] material unless they are traversable & plea distinctly traversable [illegible] 1. 8. 9

Ep. In an action of trover the declaration need not contain a distinct assertion of the plt's possession. It is sufficient if the conversion is used; as the plt's possession is not a distinct distinctly traversable, the gen. issue of not guilty denies the fact

Tenin in declaring in assumpsit the consideration is the gist of the action and not it is never directly and positively alleged

Again at C.L. a man is liable for mischief done at his animals provided he had previous notice of their bad habits: at the suit never distrain to illegal for it is not distinctly traversable but answered by the general issue

For the wrongful taking of the man it may [illegible] personally liable as it is not so and cited in the 1st book. There are many authorities that 100 Cro. Eliz. 20. Com. Dig. Pl. 9.11.14 Burn. J. 64 Co 185

The matter is in Eliz. Passim

22 The rule requiring material facts to be in issue does not hold with regard to indebitatus counts for these are at the mere Cyb. [illegible] 1 Bac. 13 Laws 71, 2 118

The rule holds when a gen. issue will not involve a denial of the material facts in question. In this case it is of course compelled to deny it by a traverse

Whenever a gen. issue will not involve a denial of a material fact it must be positively and distinctly alleged Lawes. Pl. 58

The object in ~~alleging~~ requiring the fact to be positively alleged is to allow the Def to make a traverse

If on bd. [illegible] where there is a condition precedent, for when as [illegible] does not aver the fact of performance, the averment of performance may therefore be directly traversed and for this reason must be positive and direct.

If the declaration be in other respects good and there be some cause bad in itself, and the Def. demurs, the Pff may recover on the good part. Provided that part contains a sufficient cause of action. [illegible] 1164 [illegible] Rea 995

Suppose the Pl. sues on five bonds and it appears that one was not due when the action commenced, and the Def. demurs, he may still recover on the good part. Lawes 99 [illegible] 1 Saun. 286n 286 2 [illegible] 10 Co. 115

The same rule holds in pleas where there are two or more [illegible] the one good and the others ill [illegible] 10. p. 25 q.5 1 Saun. 285 [illegible]

[illegible]

[illegible] (Tenn

[illegible] £250,00 £20 [illegible] £250,00 £20 [illegible] of course one good cause or [illegible]

The [illegible] for demurrer [illegible] respondeas ouster

When there are two counts the one good and the other bad and the Ct. instead of sustaining the demurrer issue and the jury [illegible] verdict for the whole declaration. The Ct. [illegible] judgment

The Ct. may arrest judgt. The Ct. which is to review judgt. cannot and does not know how much of the damages were assessed upon the good count and how much upon the bad one, and the court will [illegible] a new jury and assess damages on the good count's only.

The Ct. of errors never [illegible] to reverse distinctly, but for what good or sufficient reason [illegible] not aware. For the reason of this rule See Eno. Cas. 104 Tob 175 10 Ec. 302 [illegible] 985 2 H.Bl. 318 Doug 696, 731 1 E.R 508. 32 [illegible] 110 Bul. 171 2 Saun 171, a. Sal. 384

The Courts have no [illegible] of determining whether the verdict, where it is a general one given in all the counts, is obtained upon the good or bad counts and the jury are not [illegible] to know which they are given on but [illegible] it seems

[illegible] Pl. [illegible] [illegible] is a [illegible] on the [illegible] and that there should be no [illegible] damages assessed for the issue, pl. 394 Bulls 1 Com. Dig. Pleas.

If the jury should find a verdict upon both counts when they ought only damages upon each separate one, what in the good count cannot be [illegible] The reason is superfl. obvious, the Ct. knows how much was assessed upon the good count and how much upon the bad. Paris, pp. cro. J. 104. [illegible] cro. E. 783, Com. 210 1 Bulls 1 [illegible] 2. 532, 508 2 Com. 585 cit. 584

If the jury do not err upon each count but it appears upon the record how much is due judgt cannot be arrested cro. J. 194, H. T. 178.

Thus if a Pl. sues upon two bonds and in two counts and the jury return a verdict of $100 and it appears from the record that one was not due the Court have authenticated means of determining how much was given on the remaining count.

Again if some of the facts alleged in one count are actionable and others not so, and a gen. verdict is given, the Pl. is entitled to judgt

As where for example that a person was to sue for words subject "he is a felon and a cheat" the first being actionable and the second not the gen. verdict would hold Com. 17 d Rolle 570 cro. E. 28, 788 4, they will be taken to have been spoken at one time 2 Com. 171 Rolle 1[illegible] 1 Bulls. 37

See Post ✕ to #

The Declaration is not closed

## Dilatory Pleas

Formerly they were [illegible] used [illegible] in the [illegible] [illegible] 3 Bl. 302

They never reach the merits of the case 1 Chits. 371

For that reason no dilatory pleas are accepted that are not accompanied with the affidavit of some circumstance which should render them evidently true or expedient. Bac. ab. [illegible] 2 4 Bac. 35, n.

I. The first dilatory plea is to the jurisdiction of the court. The principles are maxims. The defendant [illegible] that he is not to be tried by this ct.

Plea to the Jurisdiction

In [illegible] the [illegible] jurisdictions were assumed by different cts. It is a good plea in Westminster Hall that the deft. is attorney in another ct. of [illegible] & [illegible] another the' accused [illegible] the privilege, he must plead it in his own right. Com. D. 4 Bac. 26 Cro. El. 585 Sal. 544 [illegible] 87 [illegible] 301 Cart. [illegible] 351

Privilege

It is a good plea to the jurisdiction that where the ct. is limited in its extent that the cause of action arose out of its limits

Local limit

[illegible] have occurred of this kind [illegible] city courts. By the charter of the city of N. Haven the corporation have a right to organize courts within certain limits & if a cause of action arose out of those limits it would be a good plea to the jurisdiction of the court.

[illegible] to the [illegible] juris- [illegible] [illegible] diction [illegible] [illegible] to the conclusion.

When the [illegible] jurisdiction [illegible] of the subject matter, it is immaterial for the [illegible] [illegible] Hall. 582. Cro. C. 89. Cowp. 588. [illegible] 2 [illegible]

There is no necessity of pleading to [illegible] [illegible] the party [illegible] [illegible] any stage of the proceedings even after [illegible] in arrest of judgment [illegible] the cause.

Ex. Where an indictment in a criminal case is found and proceeding in the Ct. of Com. Pleas Eng. that court having no jurisdiction in criminal cases: if judgment were rendered the proceedings [illegible] would be a nullity.

In [illegible] of [illegible] in this case [illegible] in the jurisdiction [illegible] the proceedings are coram non judice [illegible] Hall 582 + Sal. 37, Cowp. 398 [illegible]

In an action that was local the fact that it was brought in a wrong county would be a want of the jurisdiction, or if it was brought in a foreign county. 20

Ante ✗ So if damages are improperly assessed ~~on the~~ when ought [illegible] in which case the [illegible] have judgment [illegible] [illegible] on the good count only.

When the declaration is good in [illegible] [illegible] i.e. the good count does not contain sufficient [illegible] complete cause of action the effect must be the same as if it was [illegible] [illegible]

[illegible] this [illegible] [illegible] the case when there is [illegible] one demurrable. [illegible] the claim and the [illegible] [illegible] not, or in such case the declaration [illegible] [illegible] and [illegible] [illegible] 4 Bac. 25

C.D. declaration in assumpsit the promise will avoid the [illegible] consideration not. — seems in Dwarris Dwarr for two things, one sufficient the other not, then are two distinct matters of claim of which one is a sufficient cause of action

If a plea to a declaration is bad in part it is so in toto Com. Dig. Ab. E 30 Ed 25 Cain 28 no 33 2 Cain 40 Cal. 32 for an entire plea cannot be divided, being bended as an entirety to the whole if it is not in bar of the whole it is no regardable plea at all

If the jury assess greater damages than the demands, the may release the surplus and take judgt for the rest 11 Co. 5 Bac. 05, 2nd Ca. Ch. 921, 2 Bac. 203 4 Bac. 25 Mod 28 2 Ch. 18, 23 Mich 213 Ca. 204 & Ina. 304

On the Ct to correct error may order, but a release gives judgt for the residue 4 Bac. 25

But if judgt is given for the whole it is error, vide. Ch. rest of Judgt

So if the Pl. demands more than he is in fact entitled to and the jury find more he may not take the excess and have judgt for the residue 4 Bac. 20, Mod 185 & Ina. 15 5 Bac. 05, 2nd 46 after a demurrer Cain. 282. In the exceptions to the rule vide 4 Bac. 20 & 30, Mod 8 Cal 658 Lel. Ray. 8 4

#

Counties are equitable and real in
real and. 1 Sw. 264 Tenn. 217 Lacas

When the action is based upon the
is but one in a joint and the action must
be brought in the capital. Ohio. 612 Cow. 101, 113
Pa. C. 354 2 Tenn. 150 1 Tenn. 140

Venue of criminal actions is restricted
to 23 J. form and executed in Virginia that
the Virginia is varied by one Lincoln
Lin. Leg. 532 + Ill. 503

Actions are local in the following cases
1. Against the judgment of the court must be
in rem i.e. against the land and lies directly
to the property

The real actions require a jury - in rem
as Ejectment. Here the action must be brought
in the county where the land lies

2. Criminal prosecutions are local and not
for offences in the laws of one state are tried the co-
local and can be punished only in that state
Personal and actions on penal statutes are not
local out i.e. as between different counties of the same
state, but criminal actions are 2 Bl. R. 1058 Dra. 18 Corp. 161, 175
181, 5 Ga. 146 3. Where the Circuit court of a civil the
cause of action arises should the action lies
is in 1 Cal. 550 2 Bl. 2. 1058 Cow. 0, 75, 81.
4. Trespass under exept clausum out is brought
for one injury done the real, & that is local 24
Bl. 45 4. J. 2503 Dra. 646 1840

In action of debt or contract when 23 the assignee
case is local as the contract between the assignor and assignee
is annexed to the property

The land is land within the mise mes and the case is incidental to the land 2 East 550 v 179 Cart. 83 Saun. 240

On the other hand an action of covt. or debt lies the original lessee is not local this is a personal contract The lessee covenants by the lessor so must it not Saun. 240 (7) Co. 2a 3 Mod 194 2 East 579, 80 (Selfs)

A plea to the jurisdiction is the first one in the regular order of pleading. If an exception to the jurisdiction may be taken and is not, another plea not to the jurisdiction waives the objection The reason is that the Def. by pleading another subject to the jurisdiction actually waives the objection arising from the want of jurisdiction Co. L. 127(b) Hob. 164 4 Bac. 28, 35 Sb 7

Each Ct. has a right to decide upon its jurisdiction otherwise a Ct. might be ousted of all jurisdiction

A plea to the jurisdiction must be signed by the def. himself not his attorney for the Ct. supposes that the Attorney acts under the Ct. and by its permission 3 Mod 46 Lawes 91 Co. L. 127a Tot. 104 4 Bac. 35 [illegible]

In Com. the attorney may make a plea signed by himself

When the want of jurisdiction however arises from want the subject matter the Def. by not pleading to the jurisdiction does not waive the objection and cannot do it in any way. For the Def. certainly cannot give to the Ct. that jurisdiction which it has not and the proceedings are absolutely void

[illegible] to prove [illegible] [illegible] [illegible]

and not to the which he brings on another act
e.g. as executor 6 B. Sac 702 10 ad 225 a

But contrary of a Testator must be pleaded
in bar in an action brought by an executor
for the Testator was the person whose right was to be
exercised by the action, Com Q, Lutw 1604

(Jus R^s)

28 It is some times recited in bar and some-
times as a title see 5 Co. 104 a ad, 20 28, a 33
7 Co 29 Lawes 38. 104 1 Ch. Pl. 473

If the cause of action is proper to the
action it may be recited in bar. If not the plea is
deceitful Lawes. 38, 104

2. Another plea to the disability of the Pl. excommu-
is excommunication. The only notification is attain-ication
tion. It is not known in this country by Bac. ab. excom.
2 Bac 319 10 L. 133.4 8 Co. 63, 66 1 Bac 3 4 a 95

3. The third was the disability of the Pl.
is minority, This is founded on a rule of national
policy, as it is thought to militate ~~as~~ against the safety of minors
of the state to allow aliens to hold free holds
4 T.R. 308 1 Bac. ab. alien a

By the C.L. all persons born in a foreign
country, wherever their parents may be from, are
aliens 3 Bl. 366, 2 4 T.R. 308 1 Bac. ab. Aliens. a.

By Cts. in this country the children of natu-
citizens who born abroad have the rights of natural
citizens Ct. R.J. Elk Aliens Vol. 6 p. 79
But the children of aliens naturalised ~~are~~ ~~persons~~ born out
of the U.S.* In ~~other~~ alien not naturalised cannot
maintain any action of a real or mixed nature

* The children of persons naturalised have the rights, if they are under
21 years of age and ~~are~~ resident in the U.S. at the time of their naturalisation

Answer is simple and due to the 29
disability of the Pff in a mixed real action.
The reason is that aliens cannot hold real estate
the gen. rule extends to all aliens whether friends
or enemies Co. L. 129 Co. 7 Pl. C. 102 Strra. 982
1372 Pl. 90 8 E. 384 ex 2439 Bl. 37, 2

But alienage is not a bar to an alien
friend if the action is personal and in some new
states aliens are permitted to hold real estate, &
of course to maintain real actions, &c &c.
This is to encourage emigration.
No Treaty exists in this case

An alien friend may also hold a lease
for mercantile purposes Ch 194 Co. 96 to Lit. 2
Croke may maintain Ejectment to recover a house. Stocks

With alien enemies the laws are more 30
strict, he can maintain no action, &c. & therefore
a real action to the disability of the Pff that
he is an alien enemy Strra. 082, Bet. R. 103 6 T.R. 23.49
4 Bac 36

But his person will be protected by the
law of nations Doug. 520.49 Marshall 96.

But a suit may be sustained when a man-
dam lies given to an alien enemy, but not till the
war is closed, and then he must have recourse to
a Ct. of Admiralty. This is an exception to the
gen rule that no contract made with an alien en-
emy is good 3 T. R. 23 Marsh. 2 Ch. 609 Doug. 5. 9, 25 3. Bur-
54 Pl. R. 503 Marsh. 492. 3 The case in Bouvier in B. 2
which cannot be, as it is ct. of U. K.

It is an exception merely on the principle
that treaties truces or restrictions etc. are exceptions
to it as part of the law of nations and the suit can be
adjudged by the prize courts Ind. 46 4 T. R. 66 Strra.
1092 Lee. Rep. 282

[illegible] 20 Co. 3 [illegible] contract [illegible]
[illegible] [illegible] [illegible] 432,3

There is an [illegible] in execution of [illegible] rule;
that an alien residing in [illegible] jurisdiction
[illegible] may bring a [illegible] action, [illegible]
a good rule in reciprocity that we [illegible] under [illegible]
[illegible] Lil. Ins. 192 Ven. 40 1 Bac. 454 8 Co. 100 [illegible] 1082

The [illegible] wishes to [illegible] state, [illegible]
can do it only by [illegible] [illegible]
There is usually no difficulty in obtaining
this Cro. E. 142, 683

If a [illegible] alien
enemy, can maintain an action as executor, etc
Cro. E. 683, 142 1 Bac. 84

According to my judgment on the date
decisions of the final Law, he cannot, for an alien
enemy has no right to abiding in the country
and shall be be permitted to abiding in the
[illegible] of Justice and maintain intercourse with
citizens? Cro E. 5 1 Bac. 84 Cro E. 142, 683

An alien friend may as executor have
causes of [illegible] in any real [illegible] 1 Bac. 84
Ex. of an American having a lease for 10 years
abroints an English executor, the [illegible]
may hold the lease as executor of it were otherwise it would be very injurious to heirs Cro E. 5 8
1 Bac. 84

If it is proved that the [illegible] alien
enemy, the "one hundred" [illegible] 1082 Bac ab Pleas de F

[illegible] 2 [illegible] necessary, [illegible] [illegible]
[illegible] for treason or felony and that the [illegible]

[illegible] not, [illegible] [illegible] [illegible]

[illegible]
[illegible] 4 Bac 99

6. [illegible] Bailiffs

[illegible] 3 Bl. 301 Co. L. 135 b Cart. 123 3 Bac 148.9

[illegible] 1 Rol. 287

[illegible] Ingleby v. Ingleby 21 Ass. 1 [illegible] 1 Rol 287

[illegible] 2 Saun. 2 B. n. Com. St. 2. E. 1. 2 Cro. 580, Ch. St. 435 3 Bl. 301 Lilly 2 Saun. 1. Hinman vs Jeacor 3 Bac 149.50

7. [illegible] 3 Bl. 301 [illegible] 2 Saunders 04 [illegible] 4 Ch. St. 435. [illegible] 1 Saun. 2 B. n. Com. St. 2. E. 1. 2 Cro. 580, 3 Bac. Ab. Action F

3 BC 308

3 BC 301.3

Memorial

Memorial

[illegible]

[illegible] Com. Cabr. No. 1 Vide Cita. No. 2

Cr Pl 439

[illegible]

8 [illegible] 157. [illegible] Com. Cabr. ab i 11 Q. Pl. Pl. 59

[illegible] Lo Mea 1178 Com. Cabr. i. 1. 2

[illegible]

[illegible] Com. Cabr. 11

The causes or grounds of [illegible] are various, [illegible] may be either express or implied [illegible] Laws. 102. 6

34 1. Payment or tender of [illegible] in [illegible] Mismanagement [illegible] in abatement [illegible] 14 Dec. 1. of Pro. [illegible] Laws. 102. 6 [illegible] 1. 56. 502 L 39 abatement [illegible], or 1. 10-2 of Mismanagement

Exp. [illegible] Laws. 6.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 4 Dec 38 3 Bac. 620

[illegible] 5 Dec. 39, 3 Bac. 616 [illegible] 4 Bac. 45

[illegible]

[illegible] and 96 prance y cultivar of name

[illegible] 148. 24 Ch. 11, 79 [illegible] 3 Bac. 5 & 8 [illegible] 15 Hilliard 54 Com. [illegible] 1 182 Hilliard 54 [illegible] 5413

[illegible]

[illegible] 1 Bul 265 R 150 2 H. 98 297. 299

[illegible] Ins. R.

37 [illegible] 1 Bus. 216 Vide Beaun. 504 1 Ch. R. 249

[illegible] 1 Bus. 111 3 Bus. 615 Co. 43 Pro. c. 807 Ins. d. 508

[illegible] also a mistake in pleading Co. L. 3. Co. 43 3 Bus. 111

[illegible]

[illegible]

[illegible] 1 Ch. L 440 Cases 554,7 Eno. c. 89 n

* i.e. it the same in which he executed the deed

[illegible]

[illegible] 1218 Ch. 374 Eno. 39 n Ch. 440

[illegible]

[illegible] 140 8 T R 503 2 C. Eng. Cases 240

[illegible]

[illegible] 244 [illegible] 218, 33 4 Bac 38 Le Cr. Ca. 244 1 Bl. Dir. 601-60.

[illegible] 4 Bac. 38 Eng 1218. 3 Bac 62

[illegible]

[illegible]

[illegible]

[illegible]

Demo

[illegible]

[illegible]

[illegible] of course no addition is necessary in this event by t. L [illegible] abatement [illegible] Covenant [illegible]

[illegible]

[illegible]

39 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 2 Ch. 420 [illegible] Rep. 119

[illegible]

[illegible] Laws 105

[illegible]

[illegible] Bac ab Baron & Feme a. 5. thinks the cont. sue together

[illegible]

[illegible] 2 Bac 218 The Lunatic sued by 2 committee

Draft

4. The law of the parties bind the life [illegible] of [illegible] 4 C.L. [illegible] 10 Cl. & Fin. 932 4 Bac. 401 1 Com. 350 1 Bac. 7 [illegible] 139

If on the due [illegible] the parties [illegible] the final judgment should be considered it would be erroneous. The error would be extinguished for the [illegible] [illegible] the [illegible]

[illegible] 2 Sec. 218

[illegible] Dec. 8

[illegible]

[illegible] Sec. 7, 8 [illegible]

[illegible] Sec. 403

[illegible] summons and service

[illegible]

[illegible] Sec. 8 [illegible] 180 [illegible] 149 [illegible] Sec. 151

[illegible]

[illegible] 41

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] [

[illegible] [illegible] on which the [illegible] one of the [illegible] Defts only. But in case of a sole Def. in these actions only by the C.L. abate.

Vide 1 Saun 180

Variance — 5. A further mode ground of abatement is what is called a variance. Thus if the declaration varies from the writ it is a good plea in abatement, if the writ sounded in tort, and the declaration in contract. 1 H. Bl. 249 [illegible] 2 H.B. 82 3 T.R. 722 Lawes 97 4 [illegible] 5, 43 [illegible] 120 [illegible] 170 [illegible] 279 [illegible] 122, 121, 185 [illegible] 190. A modern rule of practice in the Courts of [illegible] seems to have impaired this rule. Saun. 318 2 Wil. 282 [illegible] 393 6 Co. [illegible] 440 [illegible] 2 Lawes 97 [illegible] 393 — 43

There is a mode of setting aside the proceedings in this case by motion for irregularity [illegible] a writ in [illegible] process [illegible]. — 44

The Ct. will not grant oyer of the writ to enable the Def. to plead a variance.

If there is a variance between the instrument declared on, and the description of it in the declaration, it may be pleaded in abatement. [illegible] 644 Com. ab. [illegible] 2 1 B.&P. 87 [illegible] 14 [illegible] 4 T.R. 314–16 [illegible] 1 Com. [illegible] 1.

The usual mode of taking advantage of it in Westminster is by objecting to its admissibility in evidence or [illegible] by objecting that it does not support the declaration and then making a nonsuit. Doug. 193. 646 1 T.R. 690 4 T.R. 612 [illegible] to the gen. issue [illegible] 700. 7 4 T.R. 587

[illegible] it usually [illegible] on suit [illegible] advantage is taken of [illegible] instrument [illegible] may be taken adv of in four diff. ways

1. By demurrer —

2. By motion in arrest of judgment [illegible] 458 —

3. By evidence under the gen. issue. But it was not necessary the variance was not fatal. This makes a new suit 4 [illegible]

45 4. By motion it [illegible] when the record [illegible] a demurring to the declaration; [illegible] oyer of the instrument (Cowen [illegible] 140 [illegible] 334) or there is no objection to the variance [illegible] on the record — [illegible] the instrument [illegible] on the record is thus made part of the declaration itself. It is the same as if the pltff. himself recited it in the declaration & [illegible] a variance [illegible] demurrer

In practice however [illegible] asserted that a certain instrument is not what it recites

The pltf. then must not state a certain instrument & [illegible] contradicts ([illegible] This is not law —)

A misnomer [illegible] occasions a variance must be pleaded in abatement or advantage must be taken of it under the gen. issue & [illegible] if it states a wrong proper name [illegible] advantage taken as a variance not as a misnomer

6. Another [illegible] nonjoinder or misjoinder of parties Joinder

If one sues alone where another ought to be joined this nonjoinder may be [illegible] in abatement [illegible] 248

In the case supposed the Pl. has no right of action as the Pl. [illegible] only jointly

[illegible]

[illegible]

[illegible] non or [illegible]

[illegible] opinion [illegible]

[illegible]

The [illegible]

[illegible]

[illegible]

[illegible]

If in an action on contract one sues alone when the right is in two or vice versa and the variance in the declaration the mistake is fatal and cannot be cured even by a verdict. Where the contract is on the declaration it cannot be cured 5 Co. 1 Sal. 67 1 Saun. 5th 291 p. 1 Sh. L. 304 2 Tu. 1146 warranty may be waived the nonfeasance by breach in a tort may be under the gen. issue.

Dec & Rs

In the other hand if the contract action sounding in tort when the right of action is in two or more and it appears on the declaration it only is joined in abatement 5 T.R. 100 Saun. 291 Pl. 292, 30 Stra. 820, 40 5 B.R. 040 Lead. 105 5 Cow. 407 Cro. E. 43 6 T.R. 766 Stra 420

Thus if A and B jointly bound, A alone sues C. for trespass, the declaration collides that C. trespassed on the land of A. the plea that also the land of B. cannot stand the Declaration and Replication will not strengthen the gen. issue

Where the action is brought upon mixed or mixtitular does not be indepent of the Declaration adhere in such case the right is only in abatement 5 Co. 407 Cent 205 in the case mentioned above where the gen. issue the entire of B. incites diminish the damages, not to cause the action

4th On the other hand if two trespass sue together in one action sounding in tort when the right is in one only, in such case the right of either under the gen. issue is in abatement. Here the action does in denial of the Declaration, as if A and B sue for trespass upon C, trespassed on A only Cro. E. 43 5 Bac. 200 in Count. Lac vs Barnes Tang 1805

[illegible]

[illegible]

[illegible]

[illegible]

The reason is that the [illegible] persons joining with him have not been that [illegible] contract [illegible] consequently [illegible] the [illegible]

[illegible] 48

[illegible]

Actions or causes of action" are those
comprehended in Tort and Contract

[illegible] 15 & Common Carriers Act 1845 the [illegible] goods
Bill of L.[illegible] & [illegible] 2011,

This was [illegible] consideration for
[illegible] and [illegible] of [illegible] it is now con- Dis. Pts
sidered as [illegible] in [illegible] 1-4 [illegible]

It appears then that in a [illegible] mon-
tract [illegible] of the [illegible] [illegible] it
[illegible] under the [illegible]
issue

49 [illegible] contract [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] 1 B & P 72.

If But [illegible] that [illegible] [illegible] that
another [illegible] [illegible] [illegible] [illegible] [illegible]
joined, [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

But if it appears by the [illegible] of
the [illegible] that another ought to be joined, the [illegible]
may plead in abatement or the defendant [illegible]
[illegible] under the general issue Bowzon v B.C. [illegible]
[illegible]

If the misjoinder appears in the declaration or that the person was in esse, the omission is incurable [illegible] [illegible] [illegible] by a writ

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

In cases on the contract or several one may be sued alone, or all the parties together.

There is various exceptions to this gen. rule. It is in case of [illegible] [illegible] [illegible] joint interest [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] **[illegible]** 191. [illegible] 574 3 Sc. 181 Com. Dig. [illegible] f. 6

Where the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] must be pleaded in abt.

Where the non or misjoinder goes to the merits of the action it may be taken either by abatement or under the Gen. Issue

2. Another cause of abatement is the pendency of another suit for the same cause and between the same parties. Bac. 3, 19 5 Co. 61a 4 Co 43a

This is to prevent vexatious suits. If there is a single cause of action between the same parties one suit is sufficient for the purposes of justice. The law abhors a multiplicity of suits. This rule does not hold however unless both suits are of the same kind, or [illegible], and the cause of action the same. They must be tried by the forms of law adapted to the cause of action 5 Co. 61(a)(2) [illegible] 154 4 Co. 43 1 Com. 149, 50 1 Bac. 19

[illegible]

50

[illegible]

[illegible]

[illegible] 155, Bac. Ab. [illegible] 11 Cook 131 Cowp. [illegible] 1 Term R. 4 [illegible] 4 Bac. Ab. [illegible]

Dec. Rs.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 52

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Ill. R2

[illegible]

[illegible]

[illegible]

[illegible]

53 [illegible]

[illegible]

[illegible]

Contd. Venue

54

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

# Made to London on Statement



[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Art 20

The rule does not hold in contractual cases [illegible] Cases 384

[illegible] Chron 20.1 [illegible] Case in [illegible] Hall-116

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Dec 9

[illegible]

[illegible]

[illegible] Jan 13

[illegible]

[illegible]

[illegible] Thursday

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Jan. 77 Sec. Stat. 297

[illegible]

[illegible]

## [illegible] Section

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Stark [illegible] when [illegible]

[illegible]

The rule is laid down thus, that if the second affirmative [illegible] the way [illegible] in the first [illegible] sufficient [illegible] made.

[illegible] "mise"

02 [illegible] III, 252.3 & [illegible]

Issues under the amended special

4 Bac 34

[illegible] special [illegible] Laws 1903 Sub 575
8.1 1282

[illegible]

[illegible] Act [illegible]

[illegible] 8 B. 1282 4 Bac 34

General Issue

A general issue is a denial of all the material allegations of the declaration. [illegible] 4 Mac 905 4 Bac 57

Special Issue

A special issue is one [illegible] particulars [illegible] Western [illegible] Co. 1 Wa Laws 112, 113, 145 [illegible] 105 [illegible] 4th Brown, 4 [illegible] 135 n 235 n 9 [illegible] 605 - 101, 93, 47

[illegible]

[illegible]

[illegible] Recursion

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] upon the assumption of an existence [illegible] Plaintiff [illegible] 2 [illegible] 1 [illegible] 2 [illegible] 4 [illegible] Action [illegible] 242

[illegible] declaration [illegible] 126(a) [illegible] 1 Bac 37

[illegible] changed in [illegible] 126(a) 3 Bac 313.15

[illegible]

[illegible] 126(a) 3 Bac 313.15

The [illegible]

[illegible]

[illegible]

[illegible] 113.14, 1 B.L. 411 [illegible] 2 [illegible] 415

[illegible] was not based [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible] Reasto reform

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

When issue is tendered by one party, [illegible] the other [illegible] 1 Bulst. 54 Rom. 6. 86 Hawk. 118 Co. L. 126 a Lev. 86 Cowp. 85

[illegible]

1. [illegible] the more circumstances of attending the principal fact in question unless these circumstances are material. Circumstances such as time, manner, place &c. [illegible] not generally material unless they are a variance [illegible] 2 Burr. 317 2 Burr. 1100 Jones v. Ry, 120

2. On the other hand when these circumstances are material the words "in manner & form" includes them in issue. And it would seem from the simplicity of the rules easy to distinguish what are traversable and what are not. Some examples will nevertheless be necessary.

Suppose a case of assault and battery where the defendant is charged with an assault with a sword; nor does the issue "in manner and form" traverse the use of an assault with a sword? It is sufficient proof of a club, or cane, because the instrument made use of is not material.

Here again the words "in manner and form" are not, because it is immaterial [illegible] they are not form, [illegible] [illegible] of the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] of the [illegible] [illegible] Co. L. 281 b. 4 Bac. 50

[illegible] [illegible] [illegible] [illegible] [illegible] tried on the [illegible] of [illegible] the [illegible] is material [illegible] of the [illegible] [illegible] by the words "in manner and form."

The defendant here would [illegible] himself on a bond claim on the second of [illegible]

Suppose again that A charges B with a battery committed in the county of [illegible] [illegible]

[illegible] venue is here [illegible] a matter of venue [illegible] of [illegible] description.

The deed must therefore be moved in another county or parish.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Regent

[illegible]

[illegible]

Interest
Issue

Cont
Issue

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

We are not to understand that the Defendant can [illegible] his release in such a case. The [illegible] remedy is in a Ct. of Equity.

If a [illegible] of a deed was [illegible] by mere inadvertence of deft. will not be [illegible]. The proper course to be pursued is by filing a bill in equity, & the deed thus changed becomes an agreement in the nature of [illegible] or an unsealed instrument.

The [illegible] of damages [illegible] upon a defence [illegible] advantage must be taken of [illegible] these [illegible] under the gen. issue.

If [illegible] first fact only can put in gen. issue. There is an exception however in the case of defence [illegible] mentioned [illegible] Ch. Pl. 418 Esp. D. 224

[illegible] the [illegible] under the gen. issue [illegible] to the C. L. [illegible] Ch. Pl. 415

28 What defences are admissible under the gen. issue?

A. If the evidence is admissible under the gen. issue it must be consistent with it. (If inconsistent it must be specially pleaded.)

e. g. [illegible] under the gen. issue & therefore is admissible.

In the action of Indebitatus Assumpsit there is scarcely any [illegible] license allowed in the evidence.

In this action the rule is that any thing which shows that the def. had no right to require at the time of the plea made, may be given in evidence

In this action the promise is always implied, a mere legal consequence, the material fact in question is the debt & whatever discharges the debt or any discharges the promise

In this account, does not consider this as an exception to the gen. rule, for the reason of non assumpsit, is not mean that the Def. did not promise, but that there is no indebtedness at the time of suing

Hence under the general issue, assumpsit the Def. may give in evidence, usury, illegal, release, infancy, payment, tender, discharge for the same debt, payment of a judgment, [illegible] & sales, with [illegible] expects in the [illegible] not in one [illegible] case [illegible] given in evidence under the plea of non est factum. See 498 4 Bac. 601 2 Bac. 682, 3 5 Bac. 353 2 Bac. 1010 [illegible] 981, 2 Bac. 143 [illegible] 105 [illegible] 1042 [illegible]

[illegible] in [illegible] the weight of the opinion [illegible] 472 [illegible] 933 [illegible] 376 5 Bac. 230 [illegible] 131 [illegible] 10 [illegible]

[illegible] opinions in this subject

Does the same rule hold as to second assumpsit? On principle I think that none of these defences will be admitted in evidence, in other words there is no express promise [illegible] in incongruity with the plea

The authors [illegible] that the same rule applies to special as to gen. assumpsit

[illegible] in [illegible] a [illegible] extended [illegible] [illegible] C.P.S. 1 H.B. 14, 18 4 Bac. Ab. 34 5 Mod. 8 L.C. Leg. 506 Cowp. 472, 8 T.R. 320 1 Lev. 42 Salk. 140 [illegible] 2 Esp. 710 or 2 [illegible] [illegible]

But in practice, the rule applies to both gen. and special assumpsit. Lord Mansfield in one instance seems to explain the same rule in relation to actions in the case generally 3 Burr. 353 4 Bac. 61

But this could not have been his meaning.

[illegible] the [illegible] [illegible] [illegible] [illegible] in all cases where C.L. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 289 n 2 2 Esp. 4 4 Bac. 218 [illegible]

24 The reason is said to be [illegible] "[illegible] not to [illegible]" This is a [illegible] [illegible] [illegible] [illegible] [illegible] 600 [illegible] 283 n 2

The true reason is that [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

The act provides a new series which shall be deemed under "resident" under the general issue

Now on the minute & act the act of limitations would be a general issue in indebitatus assumpsit &c. are different. But the evidence is in ~~total~~ best sense it is used therein in the present and refers to the time of bringing

Where an defence of insolvent or out "resident" would seem to be a under non assumpsit at least in indebitatus assumpsit

In the case of assumpsit evidence may be taken under the general issue, of the act of Crown

There is no reason to act but it may be done The Stat may read the general issue subject to legal disposing Lev. 114 Hil. 1 Bromskanawa R

70 It is a universal rule that every defence to the action which cannot be specially pleaded may be given in evidence under the gen. issue Lawes 111

But those special defences above mentioned which may be given under the general issue may be pleaded specially

The main reason of a defence must cannot be pleaded specially is the statements to a gen. issue

Every defence must be admissible under a plea to the action & there are but two exceptions. The gen. issue & the special plea in bar

[illegible]

[illegible]

[illegible]

[illegible] Pennsylvania [illegible] the
[illegible] which [illegible] was justified
[illegible] may be seen in evidence 2 Phil. 205

[illegible] 1 Phil. 237
[illegible] Compare
[illegible]

IL In [illegible] considerations may be
given in evidence i.e. [illegible] man may [illegible] as
[illegible] [illegible] in [illegible] in
cases [illegible] 5 cases [illegible]
[illegible] See Robbins v. Harvey 5 Conn. R.

and [illegible] cannot be given in evi-
dence in assumpsit, because [illegible] the plea
of Not Law. For that is not the criterion under the 3d. 2 Phil. 215 Compare Doe v. Roberts 5 Ala. 540

In [illegible] release may be given
in evidence under the 6th Gen. Issue
the exception in the 2d. [illegible] in
for the 2d. [illegible] intend to prevent the def.
from giving in evidence under the gen. issue
any [illegible] which he might have proved under
the gen. issue at C. L., (G. C. Williams)

But [illegible] [illegible]
under [illegible] which [illegible]
[illegible] at C. L., a release is [illegible] the scope
of the 2d. issue & therefore admissible under

[illegible]

[illegible]

Special issue

[illegible]

[illegible]

[illegible]

72

[illegible] special issue [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1. [illegible] [illegible] [illegible]

[illegible] 3. [illegible] issue [illegible]
[illegible] [illegible] (10 Co. 90 [illegible] 88 [illegible]
[illegible] [illegible] 57, 120, 130) for [illegible] giving colour [illegible]
130 [illegible] [illegible]
× [illegible] according [illegible]
[illegible] of special demurrer [illegible] a motion to the discretion of the Ct. [illegible] the Def. [illegible] his defence [illegible]

[illegible] the other [illegible]
[illegible] opinion [illegible] 7 Bac. [illegible] 193 [illegible]

[illegible] seems the Ct. may in its discretion [illegible]

Therefore according to these authorities it is not necessary [illegible] demurrer [illegible] a motion [illegible] the Ct. [illegible] the gen. issue [illegible] may be entered. This seems [illegible] exercising a discretion in [illegible] decision upon demurrer
5 Bac. 201, 2 [illegible] 490 [illegible] 165 [illegible] 503 [illegible]
So decided in Conn. [illegible] 431
The former practice [illegible]

The Ct. may [illegible] not answered [illegible] & the Def. refuses to [illegible] the gen. issue [illegible] joins in demurrer [illegible] judgment will go vs him
The [illegible] the necessity of demurring 4 Bac. [illegible] 10 Co. 49 [illegible] 320

[illegible]

2 But there is a material difference between 74
a special plea [illegible] to the gen. issue & a special plea [illegible] which in evidence may support the gen. issue

[illegible] not necessarily [illegible] to the gen. issue

[illegible]

[illegible]

[illegible] gen. issue [illegible] £49,300 [illegible] £54,500 [illegible] does not [illegible]

[illegible] to the gen. issue [illegible]

[illegible] gen. issue [illegible]

[illegible]

For such pieces do not seem the decorations, at second in [illegible]

In such case the depence is not for [illegible] not [illegible] the case supposing of such mas [illegible] in question

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] title [illegible] title.

The rule depends upon the doctrine of "Common use" [illegible] 2[illegible] [illegible] 299 [illegible] 3 [illegible] 38 [illegible] 333

[illegible] the increase [illegible] Transmissible Cro. [illegible] 594 [illegible] 114 [illegible] 22, [illegible] 24.

[illegible] when the [illegible] title passing to the possession [illegible] 128

The [illegible] of title [illegible] of title the [illegible] 18 Qu. [illegible] be ill [illegible] 55

[illegible] is a good [illegible]

[illegible]

[illegible] matter [illegible]

[illegible]

[illegible]

[illegible] a [illegible]

[illegible]

[illegible]

[illegible]

[illegible] executed in [illegible] [illegible] [illegible]

[illegible]

[illegible] 12

[illegible] Mr. James Gould [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Bar

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

So where new matter is alleged in the plea the pl. must answer to avoid an [illegible] [illegible] in which [illegible] [illegible] [illegible] [illegible] or by [illegible] [illegible] [illegible] [illegible] of [illegible]

Where new matter is pleaded the reason [illegible] must be verified [illegible] must have an opportunity [illegible] [illegible] the allegations of the other parties [illegible] [illegible] 2 Saund. 1 S. 100 Lawes 53 [illegible] 2 Saun. [illegible] [illegible]

[illegible] in the case of a general replication [illegible] under the [illegible] 2 Sec. 2 Lawes 145. 115 22 [illegible] 12

Pleas merely negative need not be verified, as the matter [illegible] cannot be [illegible] required to verify it. The [illegible] must, not just without [illegible] negative [illegible] [illegible] [illegible] [illegible] not the [illegible] Lawes 145 [illegible]. It is a [illegible] cannot be in general expected or required to prove a negative.

But pleas which form [illegible] issue [illegible] must conclude to the country [illegible] 95 [illegible] Lawes 145 [illegible] 309

Otherwise the pleading might never be brought to a close

The plea in the former case must have the [illegible] in the latter must conclude to the country.

[illegible] matters [illegible] [illegible] [illegible]

[illegible]

[illegible] 3 [illegible] 4

[illegible] so [illegible] that [illegible] separated [illegible]

[illegible] 4 [illegible]

[illegible] 3

[illegible] 4 [illegible]

[illegible] musters [illegible] as practical [illegible] rule [illegible] matter of fact

[illegible] matter of fact [illegible] arise from the same [illegible] matter of fact must be so allegated as [illegible] distinctly traversable

[illegible] B. [illegible] 3 [illegible] that [illegible] of [illegible] of [illegible]

[illegible] is [illegible] matter of fact

[illegible] special matter [illegible] pleaded

[illegible] this night

[illegible] conclusions [illegible] would [illegible] 4 Bac. [illegible] 2 [illegible] 4

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

80 As to the mode of taking advantage of such fluctuations

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] (2 Bac P 427 of course [illegible] v. case [illegible] did in terms answer y whole decl^n [illegible] a demurrer was proper) [illegible] conceive clearly [illegible]

[illegible] answer [illegible] this is actually no answer except [illegible]

[illegible]

If [illegible] & thus the judg^t would not settle the case.

[illegible] 2 Bac [illegible]

[illegible]

That [illegible] were inconsistent with each other [illegible] in the [illegible]. But [illegible] makes no

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

# General Pleading

It was a rule of the law that it was not possible specially to plead numerous facts, or a mass consisting of several matters of evidence to. L. 330 s to. 153 4 Bac. 00

But now pleading is sometimes allowed to avoid prolixity

ex. When the particular facts are for the proved the case lies to be conquered have infinitness Cro. E 740, 5 0 ex 303 2 Lin 150 Ex 5.55, Cwm. 17 n 2 Cwm. 4 n 4 1 E. 353

This rule is always a question of the case

Two examples will illustrate the general rule & the exception

The rule is commonly to avoid the labour in the pleading case, in which perfect merely is not allowed to stand as conclusive but it is presumed that the facts in a case cannot be very numerous, it must be a very specific & that he was said from that the breach.

[illegible] the rule [illegible] is should not be [illegible] consequence [illegible] the [illegible] perfect [illegible] that [illegible] necessary. [illegible] allowed to [illegible] that [illegible] formed [illegible] the matter

[illegible] on a bond to pay [illegible] on [illegible] the [illegible] of [illegible] consist of [illegible] facts, he may recover [illegible] damages & Bac. Ab. Cro. E. 94, 616 Cro. E. 215, 231 Cro. E. 383 2 Ven. 250 [illegible] Laws 60, 1 Salk. 117 [illegible] 2 Salk. 410 [illegible] 573 So in a case of the Brewer who cont. to deliver all his grains for a certain number of years

But this cannot be done where some of the circumstances are [illegible] for which the [illegible] cannot be performed. As to these it must be [illegible] that he has not [illegible] the [illegible] Cro. E. 694 [illegible] 5 Ven. 236 Esp. 303, 5

In the case of the [illegible] receiving [illegible] 82
[illegible] Cro. E. 282 5 Ven. 82

[illegible] 2 Bric. [illegible] Salk. 298

The [illegible] Bac. Ab. [illegible] & 5 Ve 2 Bric. [illegible]

The [illegible] be [illegible] with [illegible] [illegible] or a [illegible] [illegible] [illegible] [illegible]

[illegible] is [illegible] as [illegible] [illegible] [illegible]

Now the [illegible]

[illegible] 159 Cal. Rep. 570

This must be because the former is [illegible] and original cause of action or liability, & the latter [illegible] cause or liability [illegible]

[illegible]

Universal

A Universal is the language of [illegible] some particular point or [illegible] all the [illegible] the pleadings by the other [illegible] [illegible] 95

[illegible]

[illegible]

[illegible] Special Plea [illegible] Special

[illegible] Treasurer [illegible] [illegible] [illegible]

[illegible] 119 [illegible] 22

[illegible]

Ex. [illegible] 103, [illegible] 2 [illegible] 90, 412 [illegible] 4 [illegible] 105 [illegible] 429 [illegible] 104. 107 [illegible] 35 [illegible] 60 [illegible]

[illegible] 54

[illegible] 152 [illegible] 154

[illegible] 2 [illegible] 1022 [illegible] 1 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1. [illegible] Bac. Ab. [illegible] 2 Rev. [illegible] 2 H. H. 434 2 Bac. Ab. Bac. [illegible] 2 Saun. 110. 3. 46. 205 Prawse 2 H. L. 384 n 2 Saun. 205 a n

2. It was not constitutionally agreed to conclude the counts.

[illegible]

[illegible]

[illegible]

2d. [illegible] 3 Mod 203 to a fortiori on special demurrer

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Income

[illegible]

[illegible]

[illegible] 4 Dec. 0[illegible] [illegible] 2 Mar. 65

The [illegible] which received the Revenue under the Government of James II.

In the Gen. Rev. there is no exception.

57 [illegible] Mr. Matthew Bernney, [illegible] of the Revenue, [illegible] of the [illegible] Revenue of the Revolution, [illegible] matter is represented [illegible] 1 B. & A. 354.

[illegible]

[illegible]

[illegible]

[illegible]

In [illegible] is [illegible] ment as [illegible]

ex. [illegible] plea [illegible] [illegible] traverse [illegible]
absque hoc
[illegible] necessary, & conversa plea [illegible] is clad [illegible] not due" [illegible] ment necessary.

Traverse

[illegible] necessary [illegible] the [illegible] assertion [illegible] without [illegible] ~~[illegible]~~ [illegible] a negative [illegible] it is necessary [illegible]

After an Inducement is superfluous

ex. plea, [illegible]

[illegible] may [illegible] without [illegible] inducement

[illegible]

[illegible] in [illegible] inconsistent [illegible] allegations

[illegible] pressed

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 2 Mod 50 4 Bac 70 1 Saun 103 b 2 Ride 1 Leon 43. 4

Traverse

[illegible]

[illegible]

[illegible]

[illegible]

(S. Prince Trans) 4 Co. is course to allege & prove the precise amount of usury. Of course then the Def. may traverse in the words of y. sea & it would be no neg. preg.

[illegible]

[illegible]

[illegible]

General Issue

Traverse
usque [illegible] Feb 104
Traverse

[illegible]

[illegible] 89

[illegible]

[illegible] Traverse [illegible] Traverse
[illegible] 20 [illegible] 1851 Traverse
Com.t - Rec.t G. 122

[illegible] Traverse

[illegible] Traverse [illegible] Traverse

[illegible] 265 [illegible]

[illegible]

[illegible]

[illegible] Traverse [illegible] Traverse
[illegible] Traverse [illegible] Traverse
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

If he would not, [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Traverse

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Ch. Pl. 597 Com. Dig. Pl. E. 18 4 T. R. 431 5 T. R. 367 1 H. Bl. 403 4 Bac. 73 [illegible] Cro. E. 99. 418 Cro. C. 105 Saund. 22a 2 Wils. 182

The Pl. in the above case [illegible] in the [illegible] that he did not [illegible] in the [illegible] or he may [illegible] traverse & traverse the justification in the [illegible] of B absolutely that the [illegible] the [illegible] **Traverse**

In [illegible] the [illegible] more [illegible] way for the [illegible] pleas would be thus [illegible] trespass in the county of C. [illegible] trespass in the county of B [illegible] justification

When the [illegible] of the [illegible] is of [illegible] the Pl. is [illegible] the Traverse [illegible] title [illegible] the [illegible] not [illegible] of the [illegible] inducement to the traverse or the [illegible]

Ex. Debt for £100. Plea, payment of £50 which was the whole debt [illegible] the [illegible] money [illegible] is bad.

The [illegible] as to the £50 paid [illegible] ment [illegible] itself [illegible] specially [illegible] the [illegible] Gen. issue Saun. 257-9 [illegible] 118 Hob. 105 Com. D. [illegible] 10

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Harrise

[illegible]

## Protestation

Protestation [illegible] 91

[illegible] 1 Ch. R. 505, 507

[illegible]

[illegible] 1 Ch. R. 507

[illegible]

[illegible]

[illegible] 26

[illegible]

[illegible]

Protestat

1 Ch R 605.5

[illegible]

Lewes 141, 147 R T [illegible] 4

[illegible]

Lewes 141

[illegible]

"[illegible]"

[illegible]

Lewes p. 41 [illegible] 2 O & or [illegible]

[illegible]

[illegible]

[illegible]

Transcribe

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Co. E 201, 169 Com. E. 3.14

[illegible]

[illegible] 4 Bac. 38, 81 Co. E. 201 160 Com. [illegible] 221 Dow. 179 Hard. 70 [illegible] 108 [illegible] 370, 108. 82 [illegible] 370, 18 [illegible] 9 Mod. 320 Hard. 231 [illegible] 208 a n. 22, [illegible] 15 2 Salk 159 Jul. 028 [illegible] 442

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] must [illegible]

[illegible]

[illegible]

93 Traverse

[illegible]

[illegible]

[illegible] or [illegible] 8 [illegible] 23.7½ [illegible] C.C. 164. or it is demurrable more generally

Sa.

*

[illegible]

[illegible] 94

release [illegible] 34 [illegible] 8 40.245 [illegible]

12 [illegible] 41

[illegible] —J [illegible]

[illegible]

Chalcorse

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Fourse

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 95

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Traverse

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Thorne

[illegible]

"[illegible]
[illegible]
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Transcrire

Capitol.

[illegible]

[illegible]

[illegible] secretary

[illegible]

[illegible]

[illegible]

95 [illegible]

Rep 533.4.

[illegible]

Duplicity

[illegible]

[illegible]

[illegible]

[illegible] count. [illegible] action, [illegible] in the [illegible] in [illegible]

[illegible]

[illegible] surplusage [illegible] as [illegible] premises, [illegible] 1 Sid. 175 [illegible] 2 [illegible] "utile per inutile non vitiatur"

[illegible] the [illegible] day [illegible] day,

[illegible] 1 Sid. 175 1 Keb. 10 supra

[illegible] 365 [illegible] 2 [illegible]

[illegible] ins[illegible]

2.

[illegible] of the [illegible]

[illegible] Com. [illegible] C 383. Comb. 29 3 Lev. 108, Com. 114. 20 Lev. 112 4 Bac. 96 2 Com. 195. 222 Com. 29 2 Lev. 26 Lawes 25. 0. Bac. 544

[illegible]

Subject

[illegible] damage 5 Com. 30 1 Bac. 111 [illegible] 383. 1 Bac. 544 Cro. C. 170

[illegible] the preceding [illegible] case the different [illegible] are not entitled to the same point [illegible] but to different points i.e. to damages [illegible] damage, occasioned by the several breaches

100 But the many cases on many breaches on the pleases [illegible] [illegible] 2 Com. 3 [illegible] 2 Bac. 322 2 Lev. 47 [illegible] 2 B. 2. 111, [illegible]

[illegible] 4 Bac. 11 Com. [illegible] 23 C. 6. 910 [illegible] 1099 [illegible] 303

[illegible]

[illegible]

[illegible] Location [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

C. J. [illegible] [illegible]
after paid [illegible] 92

191 [illegible] Burnett

[illegible]

[illegible]

C. J. [illegible]

[illegible]

## Report & Opt

[illegible]

[illegible] 2 L. 396.7
Com 9 Pet 0. [illegible] Fitz 576.

[illegible]

[illegible]

[illegible]

[illegible] 119

[illegible]

[illegible] 5.18 [illegible]

[illegible] April 14th, 1885

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Lessee [illegible] Defendant

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Report

[illegible]

[illegible]

[illegible]

[illegible] Last

55

104

500

[illegible] the party making the [illegible] the inducement, the [illegible] more [illegible]

C. S. [illegible]

[illegible]

[illegible]

[illegible] 2 Va. 180 [illegible]

But [illegible] made to [illegible]

[illegible] not admissible to [illegible] the loss

The case in 2 Va. 180 is a matter of practice [illegible]

The same [illegible] in the [illegible]

[illegible] admitted [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Project

[illegible]

[illegible]

[illegible]

## Departure

Departure in pleading is the desertion of a former defence or claim for another distinct from it & not fortifying it.

This is a fault in pleading for the [illegible] fortifying the declaration, the replication the plea in bar, &c. is a [illegible] fault [illegible] every succeeding plea must fortify & support the former.

The reason is perfectly obvious, for if a person [illegible] has given [illegible] to another, he is allowed to [illegible] [illegible] 1 Sau. 117 n. 3. 3 Wils. 310 [illegible] 105 Co. L. 304 a [illegible] 2 H. Bl. 250 Ld. Raym. 1459 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]
4 Bac. 123 1 Lev. 81 1 Ch. 390, 400, 512

107 [illegible]

Departure

[illegible]

[illegible]

[illegible]
4 Bac. 123 1 Lev. 43

[illegible]

[illegible]
4 Bac. 123 [illegible]

[illegible]
provisions of the first [illegible]

[illegible]
[illegible] 4 Bac. 1233
5 Com. 99 Co. L. 304a 1 Ed. 11

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Denotes

[illegible]

J. G. words should be ill on yen acknowner

[illegible]

Lem. 110 . Lem 117

[illegible]

[illegible]

[illegible]

# Appendix

109

[illegible]

[illegible]

[illegible] Demurrer

[illegible]

[illegible]

[illegible]

Com. fl. 25, [illegible] 10" [illegible] 135,30 [illegible]

[illegible]

[illegible]

* and 4 ft. 27 viz.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

110

[illegible]

[illegible]

[illegible] Demarcation

[illegible]

[illegible]

[illegible]

[illegible]

112 [illegible] Jemmerier

[illegible]

[illegible] S.G.

[illegible]

[illegible]

[illegible]

113 [illegible]

[illegible]

General [illegible]

Special [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Demurrer

[illegible]

[illegible]

114 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

2. [illegible]

Co. L. [illegible] R. [illegible]

[illegible] Demurrer

[illegible]

1

[illegible] is a special demurrer

[illegible] is necessary [illegible] 33 [illegible] 7 Tilt 98, 332 2 Ex. [illegible] 718 [illegible]

The [illegible] of that [illegible] [illegible] is [illegible] [illegible]

The [illegible] of that [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible] 194 [illegible] omission of a way on the cont. is made [illegible] for common [illegible]

[illegible]

116.

[illegible]

[illegible]

[illegible] Remarks

[illegible]

Demurrer

Cont'd R. 7

[illegible]

[illegible] Demurrer

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Demurrer

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[illegible]

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Demurrer

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(Demurrer

193 [illegible] "[illegible]"

[illegible]

[illegible]

V [illegible]

[illegible]

[illegible]

2 H. Bl. 204. 9

123

Dec. [illegible]

[illegible]

Demurrer

[illegible]

[illegible]

[illegible]

demurrer to ev. is overruled. Bul 313 Doug 208.213

[illegible]

124 [illegible]

[illegible]

[illegible]

[illegible] 1 Bur. 150 Bur. 1 314 Stark 18 2 Selw. N.
117
#7 2 K & B 205. 208 [illegible]

125

[illegible]

[illegible] Demurrer

[illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

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129

130

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[illegible]

[illegible]

131 [illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

[illegible] 0,251-5

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9 4 4

130

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[illegible]

[illegible]

[illegible] c. 568

142 [illegible]

141 [illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

[illegible] 142

[illegible]

[illegible]

[illegible]

# Bills of exchange

3 [illegible] natural-
[illegible]

[illegible]

[illegible]

[illegible]

Criminal cases

Forfeiture cases

[illegible]

[illegible]

[illegible]

41

by

[illegible]

[illegible]

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10

[illegible]

[illegible] Sec. 12 Part

merely matter of haste to obtain a supersedeas on allowance of a writ of error. Pl. 631

[illegible]

[illegible]

9

## When to be Tendered

An Imp. will lie, or at least a substance of it must be reduced to writing & tendered at a Trial. Bu. 315 Sal. 88. Pl. 201

In Count. a party must give notice of his intention to file a bill (Pl. 601) or more to file a civil suit in case of action accrues. — And it will must be filed within 48 hours after rendition of case is recorded — a case on trial by jury is within same time after judgt. when filed, exclusive Sundays & holidays upon a rising of Ct. 2 Lev. 275. Root 509. 70

[illegible]

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## [illegible]

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26

2 Bac. 231, 2, 370. Wms. 718 gen.
119 Cro. J. 246 9 Com. 113

[illegible]

32 [illegible]
*[illegible] the [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] was released, [illegible]
to be [illegible] ? [illegible] E.
[illegible] 108, p. 9. [illegible] *according to Lat an ab-
ridgment [illegible] p. 140

It must be [illegible]
[illegible] [illegible]
the means of [illegible]
[illegible] must be in the [illegible]
[illegible]
[illegible]
[illegible] [illegible] D. C. [illegible]

[illegible]
[illegible] an execution [illegible] for which
he is not bound by law to [illegible] it, [illegible]
on [illegible] 2 Bac. 232

E. D. [illegible]
[illegible] capias ad satisfaciendum [illegible]
[illegible] not [illegible]
[illegible] not [illegible]
[illegible] 1 Bull. 778 [illegible]
[illegible] 3 Bac. 778

33 [illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible] the laws of Congress.

Cases exemplifying [illegible]

[illegible]

## Case Book No. 3

Case I [illegible]

II [illegible]

III [illegible]

IV [illegible]

[illegible]

V [illegible]

VII [illegible]

VII

VIII

IX

X

XI [illegible]

XII [illegible]

(x [illegible]

When a fund is appropriation and the litigation is [illegible] action [illegible] [illegible] [illegible]

# [illegible]

[illegible]

[illegible]

[

48

49

[illegible]

[illegible]

[illegible]

[illegible]

In some cases in Chancery [illegible]
[illegible]

But a new trial [illegible]
will not be granted if it appears the [illegible]
was been done [illegible]

The incompetency of a witness [illegible]
should be at the trial [illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]

It is said [illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]

[illegible]
[illegible]

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[illegible]

3. [illegible]

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[illegible]

4. [illegible]

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Surprise

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59

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13 [illegible]

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28

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By [illegible] Corn. [illegible] the [illegible]
the [illegible] [illegible] [illegible] [illegible]
[illegible] by the [illegible] [illegible]

3 [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

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# Memorandum

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[illegible]

[illegible] conductor [illegible] the [illegible] manner in the act a common character is not in [illegible] necessarily lead on point of liberty, or at [illegible] previous criminal intercourse with [illegible] the [illegible] intercourse with another. Sec. 40

The Ct. is [illegible] to [illegible] the admission of evidence in the [illegible] cases in the contrary is not

[illegible]

[illegible] only for the reason before given. Sec. 3 [illegible] Sec. 224 [illegible] Ct. 4 Bur. [illegible] 8

[illegible] character is very [illegible] Sec. 5

Best Evidence

9

[illegible]

## Pelletier

[illegible]

[illegible] 2 Yeark. C. 25 § 2

## Decoste

[illegible]

10

11

12

Expenditures

Income

Income

14

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[illegible]

[illegible]

[illegible] Sec. 294

[illegible]

[illegible]

[illegible] Sec. 292

[illegible]

18 Crimes
Cases

19

[illegible]

[illegible]

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# Presumptive Claimee

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[illegible] 1 Mod 30

[illegible] 2 [illegible] Graham [illegible] 584 [illegible] Sumner [illegible] 607 [illegible] 1 B & P 400 2 B & P 206 applies exclusively to incorporeal hereditaments –

[illegible]

Lapse of time

[illegible]

[illegible] Sec 2. [illegible] Sec 24
[illegible] Sec. 5 & 8 Acts [illegible] 2/4

[illegible]
[illegible] 29 [illegible]
2nd [illegible]

[illegible] 4
[illegible] Sec 2 [illegible] 326
[illegible] Sec. 2. 515 [illegible]
[illegible]

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31 [illegible]
[illegible] 30 [illegible] 210
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[illegible]

[illegible] Sec. 20 & Sec. 37 [illegible] Sec. 39

[illegible]

[illegible]

[illegible]

38

## Kinds of Evidence

Evidence is of two kinds 1st Written
2nd unwritten or Parol

Written Evidence is of three kinds
1st Records 2 Judicial writings or documents
3 Private writings Sec. 26

1st Written Records are written
memorials of the acts of State, or of proceedings of
Justice according to [illegible] customs of [illegible]
[illegible] 4[illegible] [illegible] Sec 32 [illegible] 83

Records [illegible] memorials of
acts of a Legislature [illegible] [illegible]
[illegible] a record [illegible] Records
Sec. 26 [illegible] Bul. 225, 221

[illegible] cannot be contradicted
[illegible] Bul. [illegible]
224 [illegible]
[illegible]

Whenever [illegible]
[illegible] or any unauthorized alteration [illegible] of [illegible]
[illegible] may be proved by parol [illegible]
not admitted to prove, [illegible]
[illegible] a record [illegible] was [illegible] made.
The [illegible] 13th [illegible]
[illegible] Ph. 2. 604 [illegible] Sec. 110
[illegible] Sec. 28 [illegible]

[illegible]

[illegible]

[illegible]

35

30

# Copies of Records, &c. &c. &c.

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39 [illegible]

[illegible] not [illegible]

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40 [illegible]

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[illegible]

[illegible] 42

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[illegible]

4.

43

# Judgments

44

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(Deb. vide *

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45

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[illegible]

(Distinction between prop. and verdict

Note = The [illegible] of [illegible] upon Evidence as to this distinction has occasioned much Confusion.
(By Chairman of Ways)

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*2 [illegible]

*2 [illegible]

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Election [illegible]

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[illegible]

[illegible]

Ex. [illegible] Pet. 2, 2 [illegible]

[illegible]

A [illegible]
in no case [illegible]

[illegible]
Pet. 2 & 3 Pet. [illegible]

The [illegible] 201

[illegible]

[illegible] 43

[illegible]

0 2 [illegible]

≡43 P. 16. 102 [illegible]

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66 [illegible]

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[illegible] 14. 255

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Pensi-
tions

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65 [illegible]

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Slavery

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Ex. [illegible] Consideration Book 382. Fol. 18 [illegible] Book 108 [illegible] 200, 297, 103 [illegible]

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[illegible] there is no [illegible] [illegible] "The Lex [illegible]"

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Ex. [illegible] agreement for a lease [illegible] $100. [illegible] lease [illegible] [illegible] 2 Stil. 249 [illegible] 153 [illegible] [illegible] 73. [illegible]

But [illegible], [illegible] [illegible] [illegible] 3 Pick. 37

But collateral matters [illegible] written agreement is not [illegible] [illegible] 8 T.R. 9; 2 Stark. 100

[illegible] 5 Mass. 85

[illegible] [illegible] [illegible] [illegible] [illegible]

Ex. [illegible] 8 T.R. 57 [illegible] 38

[illegible] [illegible] 39 [illegible]

To in such cases [illegible] not [illegible] to contradict a written instrument, but to show [illegible] [illegible] [illegible]

[illegible]

[illegible] Mich. [illegible] and [illegible]

95 [illegible] 1 Ch. 1.83 5 Ch. 278 35 L.J. Ch. 258 [illegible] 2 Ch. 248 4 Ch. 327 1 Ch. 120 [illegible] 14 Ch. 348 1 Mich. [illegible] 22 [illegible] 302 [illegible] 5 Ch. 751

[illegible]

[illegible] Comp. 819 [illegible] 29 [illegible] 237, [illegible] 2 [illegible] 449 [illegible]

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[illegible] 2 [illegible] 300 [illegible] 2 [illegible] [illegible] 2 [illegible] 8 [illegible] 339 [illegible] 11 Mich. 27

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## [illegible] Evidence. [illegible]

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3 Febr. 83

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108 [illegible] property in question [illegible] 10 Leach 290 [illegible] 30, 61, 110, 144 [illegible] property with his notice of connection takes place or not.

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## Recommendations

I. [illegible]

II. By [illegible]

III. [illegible]

IV. [illegible]

V. [illegible]

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[illegible] Statutes of Connecticut Revision of 1821 - Folio one hundred and ninety nine

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[illegible] 135

[illegible] proof of forgery [illegible] 90
[illegible] 173, 184, 255 See 109 n (11)

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239

10 Phil 99. note. 1 Cairnes 148

141

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142 [illegible]

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[illegible] Walton vs Shelby 1 P. R. 290 [illegible] first adopted in [illegible] 181 [illegible] 1844 1 P. R. 300

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[illegible] 31 [illegible] 0.48 [illegible] 690 [illegible] 34 n

[illegible] 688 101 3 Pa. St. 363, [illegible] 136 [illegible] 0.447 [illegible] 65

[illegible] 89 n [illegible] 0.71 [illegible] 1 [illegible] 189 [illegible]

[illegible] 70 [illegible] 0.01 [illegible] 117 [illegible] 0.0.0 [illegible] 109

# Commune de Hérisson

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# Ordonnance [illegible] Wenceslas [illegible] Constance

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Rec. 1821 p 45-7

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The Criminal Cases

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[illegible]

[illegible] are [illegible] in [illegible]
in cases [illegible], they are admitted to
give their evidence in case where corporal
punishment cannot be inflicted. Act 1540.

[illegible] is taken in another Title
to be used in cases of most serious [illegible]
revolution or [illegible] [illegible] 14

[illegible]
government

Before a [illegible] is taken in the
matter he shall be [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
Illinois 1845 1840 514

Civil Officers in Revolt Elections
[illegible] are entitled to [illegible]
[illegible] Act 25

[illegible] are several co-partners in a
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] 100

[illegible] is [illegible]
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[illegible] W. C. Hodgson

Bill Hewat

GOULD'S

LECTURES

VOL. 4.

GEO. C. WOODRUFF